

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of)	No. PLN 50880 SPR/CUP
)	
Michael & Darden Burns, LLC,)	
On Behalf of Madison Avenue)	Winslow Hotel SPR/CUP
Development, Inc.)	
)	
For Approval of Major Site Plan/)	
Design Review and Approval of)	FINDINGS, CONCLUSIONS,
<u>A Major Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for approval of a major site plan/design review and a major conditional use permit to develop a 1.85-acre site with an 87-room hotel, a banquet space, meeting rooms, a restaurant/bar, and a spa at 253 and 241 Winslow Way West is **APPROVED**, subject to conditions. Conditions are necessary to mitigate the impacts of the proposed development and to ensure compliance with the criteria for approval as established by the City Council, including detailed conditions related to mitigation of traffic impacts and potential noise impacts. A condition allowing for re-opening of the hearing, if unanticipated negative impacts occur following operation of the hotel, is also provided to help address Applicant, City, and citizen concerns.

SUMMARY OF RECORD

Hearing:

The Hearing Examiner held an open record hearing on January 23, 2020, to receive testimony and documents on a request for approval of two applications required by City ordinances¹ for development of the proposed 87-room Madison Hotel. The record was kept open until January 31, 2020, to allow additional documents to be submitted, and to allow the attorneys for the Applicant and the City to respond both to those documents and to public testimony presented at the hearing. A post-hearing order established the date of February 7, 2020, as the time allowed for the attorneys for the Applicant, the City, and the Winslow Neighbors to submit a request to reopen the hearing if the additional material raised new issues needing additional hearing time. In a post-hearing order, dated February 11, 2020, the Hearing Examiner determined that there was no reason to reopen the hearing. The record was closed on that date, and this decision is now issued.

¹ City ordinances require that the proposed development obtain approval of a major conditional use permit (CUP) and of a major site plan/design review application. *Testimony of Ms. Wright; See Exhibit 1, Staff Report, for citations to applicable ordinances.*

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Testimony:

The following individuals testified under oath at the open record hearing:

Heather Wright, City Planning Director	Pam Cole
David Greetham, City Planning Manager	Natalia Ilyin
Mike Michael, City Engineering Project Manager	Scott Schirmer
Michael Burns, Property Owner & Applicant	Dave Mackenzie
Bruce Anderson, Architect for Applicant	Gail Hiestand
Greg Heath, Traffic Expert for Applicant	Jack Sheridan
Jeff Weckstein, Parking Expert for Applicant	Holly White
Ross Tilghman, Traffic Expert for Winslow Neighbors	Priscilla Zimmerman
Adam Jenkins, Noise Expert for Winslow Neighbors	Ruth Urbach
John Adams, Design Expert and Architect for Winslow Neighbors	Ed Cannard
James Cutler	Wendy Hinman
Kathryn Lafond	Jack Sjolseth
Barbara Kirk	Cheryl Crist
Allison Davy	Debbie Hollyer
Phyllis Carlyle	Caroline Clarke
Jon Quitslund	Kjell Stoknes
Cindy Bellas	Maradel Gale
	Sheila Curwen
	Joanna Pyle
	Roger van Gelder
	Robin Simons
	Fran Korten

Attorney David Bricklin represented Winslow Neighbors.

Attorney Nancy Rogers represented the Applicant.

Attorney James Haney represented the City.

Exhibits:

A list of the exhibits admitted into the record, and information on the orders, legal briefs, and other pleadings, are provided as Attachment A, attached to this decision.

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. Michael & Darden Burns, LLC, and Madison Avenue Development, Inc. (Applicant), request approval of a major conditional use permit (CUP) and major site plan/design

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review to redevelop two parcels on a 1.85-acre site with an 87-room hotel.² In addition to the 87 rooms, the hotel would include a banquet space, meeting rooms, a restaurant/bar, and a spa. The hotel would be designed around a courtyard that would preserve a Giant Sequoia tree, and provide a reflecting pond, ceremony space, a band shell, and additional landscaping. All parking would be located on-site, both as underground and as surface parking, with 143 spaces. There would be capacity for an additional 37 vehicles using stacked parking valet services. Frontage improvements would include a six-foot-wide sidewalk, a bike lane, two on-street parking spaces, an electric vehicle charging station, planting strips, and street trees. The property is located at 253 and 241 Winslow Way West.³ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 6; Exhibit 7; Exhibit 10; Exhibit 11; Exhibit 13.*

2. Several iterations of the proposed Winslow Hotel were submitted to the City of Bainbridge Island (City) for its review. Of particular note, the Applicant submitted materials seeking a CUP and major site plan/design review to develop a 75-room hotel on December 27, 2018. The City determined that the application was complete on January 24, 2019, and provided notice of the application for this version of the proposal, as required by the municipal code. On April 26, 2019, however, the Applicant submitted revised application materials for the present proposal, which includes a request for approval of a CUP and major site plan/design review to develop an 87-room hotel, with associated development, as described above. The City provided notice of the revised application, as required by the municipal code, by mailing notice to surrounding property owners, publishing notice, and posting notice at the City Hall Kiosks and the City website.⁴ The Applicant also posted notice of the revised application on the project site on April 26, 2019. On November 29, 2019, the City provided notice of the open record hearing associated with the revised application by publishing notice, mailing or emailing notice to surrounding property owners and reviewing government departments and agencies, and posting notice at City Hall Kiosks and the City website. The Applicant also posted notice of the hearing on the revised application at the subject property on or about November 29, 2019. The City received several comments from reviewing government departments and agencies in response to its notice materials, as detailed throughout this decision. The City also received over 300 written comments from

² The Applicant filed a single Master Land Use Application seeking both a major conditional use permit and major site plan and design review. BIMC 2.16.040.E.7 allows an applicant to seek site plan and design review with other land use permits in a consolidated project review.

³ The property is identified by tax parcel numbers 27502-4-097-2000 and 27502-4-098-2009 *Exhibit 1, Staff Report, page 1.*

⁴ On October 8, 2019, the Applicant submitted additional revisions to the project that would include adding 11 residential studio units. Ultimately, however, the Applicant withdrew this request. *Exhibit 1, Staff Report, page 8.*

members of the public. Information on these comments is detailed later in this decision. *Exhibit 1, Staff Report, pages 8 through 10, 18, and 19; Exhibit 3; Exhibit 4.*

State Environmental Policy Act

3. The City acted as lead agency to analyze the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's Environmental Checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) for the proposal on November 25, 2019, with an appeal deadline of December 9, 2019.⁵ *Exhibit 1, Staff Report, page 19; Exhibit 23; Exhibit 30.*
4. Because MDNS conditions are incorporated and enforced as conditions on permits issued by the City, it is important to consider in detail the MDNS conditions when reviewing applications for approval of City permits. Here, the filing of requests for approval of a major conditional use permit (CUP) and major site plan/design review triggered a review of the proposal under SEPA, resulting in the issuance of a MDNS. The MDNS details twenty requirements for the proposed development that must be adhered to by the Applicant if the requested permits are approved. A summary of the mitigation measures is given here, but the reader is encouraged to refer to Attachment B of this decision for the complete list of MDNS mitigation requirements.

As required by the MDNS, the Applicant must immediately stop construction if any historical or archaeological artifacts are discovered during excavation or construction. The Applicant must also photograph and document an existing building on the site, to be displayed at the hotel. In addition, the Applicant must develop the frontage of adjacent property to the east of the site, install a crosswalk on Winslow Way West, and repave the right of way along the Winslow Way West frontage of the property and the adjacent property to the east. The Applicant must provide a shuttle service and shared bicycle program and communicate these transportation services to guests. Additionally, the Applicant must have staggered check-in times corresponding with the Ferry schedule and must display appropriate parking signs at various vehicle entrances. To the extent feasible, the Applicant must inform abutting neighbors of events taking place at the hotel. The Applicant must also submit monitoring reports to the City regarding traffic, parking, and noise impacts, which the City could use to administratively impose additional conditions. The Applicant must comply with clean air regulations and must submit a dust control plan to the City prior to site activity. The Applicant must enclose solid waste facilities within the building, with pick-up required to take place under the building at

⁵ A citizens group, "Winslow Neighbors," timely appealed the MNDS on December 9, 2019. The appeal was withdrawn on January 17, 2020, less than one week prior to the scheduled appeal hearing. Accordingly, the appeal was dismissed, and the City's SEPA determination is final.

specified hours, and delivery services to the hotel must occur at loading docks in the west wing of the building. Additionally, the Applicant must install a solid six-foot wall or fence along the west property line abutting an access drive to adjacent townhomes and must plant vegetation to mitigate impacts to neighboring properties. The limits for clearing and grading must be clearly marked in the field and inspected prior to site work. Finally, the City's arborist must be present during the preconstruction meeting to advise on best practices for excavation around the root zones of trees to be preserved both on and off the site.

Exhibit 30; See Attachment B.

Comprehensive Plan, Zoning, & Surrounding Uses

Comprehensive Plan

5. Winslow is the name given to the downtown area of the city of Bainbridge Island. The property is located in the Winslow Town Center and is designated as part of the Central Core Overlay District, within the Mixed Use Town Center designation, under the Comprehensive Plan. The City developed a Winslow Master Plan to refine the Comprehensive Plan's goals and policies as they relate to Winslow. The City's Comprehensive Plan and Winslow Master Plan encourage development of a neighborhood in the Winslow Town Center that contains a strong, vital downtown where people want to live, shop, and work, with development outside of the mixed-use, higher-density center to contain a variety of housing choices, from higher-density multifamily areas immediately adjacent to the downtown to single-family residential neighborhoods. The Central Core Overlay district is the most densely developed district within the Mixed Use Town Center. The City Comprehensive Plan encourages residential development within the Central Core Overlay district, but also permits office and/or retail uses. *City Comprehensive Plan, updated February 2017, pages LU-11 through 12; Winslow Master Plan, updated November 2006; Exhibit 1, Staff Report, pages 1, 6, and 23 through 25; Exhibit 7.*
6. City staff reviewed the proposal for consistency with the Comprehensive Plan, as well as with the Winslow Master Plan, and identified several dozen goals and policies applicable to the proposal.⁶ Following this review, City staff determined that the proposal would meet the intent of the Introductory Guiding Principles and Goals of the Comprehensive Plan and would satisfy several goals and policies of various elements of the Comprehensive Plan, including the Land Use Element, the Economic Element, the Environmental Element, the Water Resources Element, the Housing Element, the Transportation Element, and the Capital Facilities Element. More specifically, the City determined that the hotel would implement creative tourist accommodations through a building design orienting most rooms to the courtyard, which would contain an existing

⁶ Specifically, City Staff identified the Comprehensive Plan and Winslow Master Plan goals and policies listed in Attachment C as applicable to the proposed development. *Exhibit 1, Staff Report, pages 10 through 17.*

Giant Sequoia tree, as well as retain over 100 trees on the site, including the existing landmark trees on the site. The City also determined that the development would increase employment opportunities.

The City review noted that the proposed development would include construction of a 42,000 gallon cistern system to recycle 500 to 700 gallons of water a day and would prepare plans to incorporate an on-site sewage system as well as a rainwater catchment system for roof and impervious surface runoff. The City review also determined that the proposed development could reduce reliance on automobiles through frontage improvements and proximity to ferry service and public transit, as well as provide up to fifty jobs for local residents. The City expressed concern, however, about lack of affordable housing for employees, and therefore recommended that the Applicant provide a minimum of six affordable housing units on-site.

In its review, the City noted that the Applicant consulted with an acoustical engineer to reduce noise impacts, noting that the proposed development includes a bandshell to reduce noise escapement in addition to landscaping, green walls, and enclosed underground trash facilities. The City recommended additional conditions to reduce noise impacts, including requirements for sound monitoring, landscaping, and a wall along the west property line.

Finally, City staff determined that, with 83 conditions of approval, the proposal would be consistent with the goals and policies of the Winslow Master Plan by providing an enhanced pedestrian experience, through frontage improvements and better connectivity to retail spaces, the ferry, public facilities, open spaces, and residential areas, and by expanding the customer base for local businesses, providing community gathering spaces, and using sustainable building practices.

Exhibit 1, Staff Report, pages 10 through 18.

Zoning

7. The property is within the “Mixed Use Town Center, Central Core” (MUTC-CC) zoning district. Permitted uses within the MUTC-CC zone include entertainment facilities, restaurants, personal services, and retail sales. *Bainbridge Island Municipal Code (BIMC) 18.09.020*. Hotels are allowed within the MUTC-CC zone with the approval of a CUP. *BIMC 18.09.020*. BIMC 18.36.030.130 defines “hotel” as “a building or group of buildings containing guest rooms where, for compensation, lodging is provided for transient visitors. A hotel or motel may contain one or more restaurants.” City staff determined that, with 83 recommended conditions, the proposal would meet the purpose of development in the MUTC-CC zone by providing a facility that would serve as a place for people to shop and work, encourage a lively community during the day and night, and promote a pedestrian atmosphere. *Exhibit 1, Staff Report, page 23.*

8. Performance standards for uses in the MUTC zone under BIMC 18.06.030.B relate to noise, air quality, and lighting. These performance standards provide that no use in the MUTC zone shall exceed the maximum environmental noise level established under City code; produce emissions of smoke, dust, and/or odors that may unreasonably interfere with any other property owners' use and enjoyment of their property; or contravene the lighting standards established under City code. *BIMC 18.06.030.B*. Noise impacts of the proposed hotel, in particular, were raised as a concern in public testimony at the hearing and are further discussed below in Findings 21 through 23. *Exhibit 1, Staff Report, pages 23 and 24; Testimony of Adam Jenkins; Testimony of Phyllis Carlyle; Testimony of Pam Cole; Testimony of Scott Schirmer; Testimony of Dave Mackenzie; Testimony of Debbie Hollyer; Testimony of Caroline Clarke; Testimony of Maradel Gale; Testimony of Sheila Curwen.*

9. BIMC Table 18.12.020-3 provides dimensional standards applicable to development in the MUTC-CC zone. The Applicant's proposal would comply with dimensional standards relating to lot coverage and setbacks for front, rear, and side yards. The Applicant proposes to have a 0.91 Floor Area Ratio (FAR), which would exceed the standard 0.6 maximum FAR generally applicable to development in the MUTC-CC zone. The Applicant would be eligible, however, for a maximum 1.0 FAR through the provisions of BIMC 18.12.030.E. BIMC 18.12.030.E provides several options for eligible properties to obtain a bonus FAR, which may be combined to achieve the maximum level of development above the base FAR. These options include providing affordable housing, purchasing development rights, providing public amenities and/or infrastructure on-site, preserving heritage trees on-site, and providing community open space. *BIMC 18.12.030.E*. The Applicant proposes achieving a portion of the bonus FAR necessary for the project through the preservation of heritage trees on the site, which would require a city council resolution clarifying the amount of credit awarded. *BIMC 18.12.030.E.3*. The maximum building height for development in the MUTC-CC zone is 35 feet, or 45 feet if the building contains underground parking. *BIMC Table 18.12.020-3*. The Applicant's proposal would comply with these building height requirements when accounting for the proposed underground parking facility. Additionally, the Applicant's proposal complies with the development standards in BIMC 18.15.010 relating to landscaping, screening, and tree retention and replacement. *Exhibit 1, Staff Report, pages 25 through 28; Exhibits 5 through 10; Exhibit 28; Exhibit 29.*

Surrounding Uses

10. The 1.86-acre site consists of two contiguous rectangular lots located at 241 Winslow Way West and 253 Winslow Way West. Winslow Way West fronts the lots to the north between Wood Avenue SW and Finch Place SW. Residential units fronting Wood Avenue SW are located directly west of the site. The site slopes downward to the southwest at a gradient average of 6 percent. Current development on the site includes a

commercial structure leased by the Seattle Children's Bargain Boutique, a demolished commercial structure foundation that was last used as a bar, and a 1,500 square foot vacant structure that was last used as a restaurant. The site contains three landmark trees that would be retained, including a Giant Sequoia tree on the boundary of the two lots. *Exhibit 1, Staff Report, pages 6 and 23; Exhibits 6 through 8; Exhibit 28; Exhibit 29.*

Site Plan/Design Review

11. City code requires that certain development proposals, including this one, meet criteria related to site plan and design review, as detailed in BIMC 2.16.040.F. The Planning Director and Planning Commission are to make recommendations on development proposals that are consistent with these criteria. The criteria generally require that the site plan and design comply with applicable code provisions and district development standards; that the locations of the building and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems be adequate, safe, efficient, and in conformance with the Island-Wide Transportation Plan; that the site plan and design be consistent with applicable code design guidelines; that the proposed site plan be unlikely to result in harmful or unhealthful conditions; and that the site plan and design be consistent with the purpose of the site design review process and open space goals. *BIMC 2.16.040.F.*

12. One element to be reviewed to help determine compliance with site plan/design review are building design guidelines. Some public testimony presented at the hearing alleged non-compliance with building design guidelines as a reason to deny approval of the proposed development. Building design guidelines specific to development in the MUTC-CC zone address a building design's overall massing and variation, street level elements, upper level setbacks, blank walls, and roof appearance. These guidelines provide, in part, that:
 - Buildings shall incorporate articulation on all sides, with street-facing sides receiving the greatest amount of attention in terms of richness of forms, details, materials, and craft.
 - Building frontages along a street shall include elements to avoid long, monolithic facades.
 - Building facades along Winslow Way and Madison Avenue shall be stepped back above the second story. But this is not intended to produce a rigid, uniform stepback along the street, and certain specified alternatives are acceptable. Additionally, alternatives to the stepback requirement may be proposed, so long as the effect is that the upper floors appear to recede from view and that the impacts of massing on light and air are addressed.
 - Flat, unembellished roofs are not desired, but flat roofs may be appropriate for green building purposes, such as the use of solar panels.

- Buildings located within 100 feet of residential zones outside of the Core shall incorporate pitched roof forms, with slope between 4:12 and 12:12 in order to create a transition in development pattern.

Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts, pages 47, and 50 through 52.

Some public testimony alleged that the proposed buildings violate several building design guidelines, including lack of pitched roofs, lack of elements to avoid monolithic facades, and lack of appropriate setbacks. *Testimony of John Adams, Phyllis Carlyle, Cindy Bellas, and Robin Simons.*

13. Unlike fixed zoning standards, the design guidelines for development in the MUTC zone are intended to be flexible. The introductory section of the design guidelines applicable to the MUTC zone states that “(d)esign guidelines are not intended to be like quantitative, fixed zoning standards. They are to be applied with an attitude of flexibility.” The guidelines are careful to articulate they are not to be ignored, stating that “(w)hile the design criteria contained in this document are guidelines and not regulations, each proponent of a project has an obligation to demonstrate how each relevant guideline has been addressed” and that “if criteria have been insufficiently addressed, conditions will be placed upon a project to assure that the criteria are sufficiently addressed.”
Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts, pages 1 and 2.
14. The Applicant prepared a Design Review Checklist assessing the applicable design guidelines. In particular, the Applicant asserted that the proposal would meet the guidelines applicable to the design of facades, articulation, roofs, and upper level setbacks: the overall building form would be broken into three major blocks, with linking elements to address scale on Winslow Way; the Winslow Way frontage would be highly articulated with three building blocks connected with linking elements; the east and west roofs would be designed to accept solar panels, and the north roof would be pitched in the opposite direction to give scale to the street; and the overall building forms would vary in their positions relative to the street to provide scale, with linking elements designed to be shorter than the major building forms. *Exhibit 20.*
15. A proposal requiring site plan/design review must be reviewed by the City’s Design Review Board (DRB), as well as by the City’s Planning Commission, to ensure the proposal complies with the City’s design review guidelines. *BIMC 2.16.040.E; BIMC 2.16.110.E.* An Applicant may request that review of a site plan and design be consolidated with review of other land use permits, such as a CUP. *BIMC 2.16.040.E.7.* The Applicant for this proposal consolidated review of its site plan and design with its request for approval of a CUP. *Exhibit 2.*

Both the DRB and the Planning Commission reviewed the proposed development prior to the open record hearing before the Hearing Examiner. Both the DRB and the Planning Commission held multiple meetings to review the proposed development, and both issued recommendations that were considered by the Planning Director and this Hearing Examiner. *Exhibit 1, Staff Report, pages 6 through 10.*

Design Review Board Review

16. BIMC 2.16.040.D requires an Applicant to engage in three meetings with the Design Review Board (DRB) prior to submitting an application for site plan/design review. The DRB reviewed the Applicant's proposed site plan and design at three pre-application meetings on September 11, 2017; May 7, 2018; and December 17, 2018. The DRB expressed concerns about the proposed development during its initial review, including the scale of the façade, adequate parking, timing of guest arrivals, and the service area plans. The DRB suggested that the proposed site plan and building be scaled down with greenery and public spaces, that the need for parking be reduced by providing car share opportunities, and that additional proposals include drawings that account for the scale and proximity of surrounding buildings. Following the initial DRB review, the Applicant submitted revised application materials on December 27, 2018, which proposed a 75-room hotel. The DRB met on January 7, 2019, to review the proposal. It met again on May 6, 2019, and June 3, 2019, to receive updates from the Applicant.

On June 7, 2019, the DRB entered findings of fact in which it determined that the project, with conditions, would be consistent with the applicable design guidelines. It recommended approval of the design with conditions related to additional landscaping for the parking areas, a description of the material pallet, and specific plans for the roof drainage/gutter system. The DRB noted that additional review by it may be necessary to make a final determination.

*Exhibit 1, Staff Report, pages 7 and 8; Exhibit 21.*⁷

Planning Commission Review

17. The City Planning Commission reviewed the proposal at four meetings between June 13, 2019, and July 25, 2019. On July 25, 2019, the Planning Commission voted to recommend denial of the proposal and issued written findings in support of its recommendation. The Planning Commission determined that the Applicant's proposed development did not comply with several criteria listed in BIMC 2.16.040.F. Specifically, the Planning Commission found that the site plan/design is not in

⁷ On April 26, 2019, the Applicant revised the proposal to add 12 more guest rooms (with no increase in floor area), 12 parking spaces, and 9 windows in the courtyard, and to remove proposed seating near the bandshell. The DRB was briefed on the revisions on May 6, 2019, deemed the revisions minor, and concluded that the revisions did not require further DRB review. The DRB again met on June 3, 2019, to review additional revisions proposed by the Applicant, but the Applicant ultimately elected to proceed on the proposal presented to the DRB on May 6, 2019. *Exhibit 1, Staff Report, pages 7 through 9; Exhibit 21.*

conformance with development standards (without specifying which ones); is not consistent with the design guidelines; is not in conformance with the Comprehensive Plan and Winslow Master Plan; and is not consistent with open space goals because the interior courtyard, as proposed, can only be accessed by first entering the hotel so it is not readily accessible to the public. *Exhibit 1, Staff Report, page 9; Exhibit 25.*

City Staff Review

18. The City Planning Director reviewed the DRB recommendation, the Planning Commission recommendation, and the development proposal, itself, for consistency with the City's design review guidelines, as required by BIMC 2.16.040.E.6. The Planning Director disagreed with the findings of the Planning Commission in several areas, including the compliance of the proposed development with City code, consistency with applicable design guidelines, and conformance with the Comprehensive Plan and Winslow Master Plan. The Planning Director noted that her determination was based on the DRB's final June 17, 2019, decision, recommending approval, whereas the Planning Commission appeared to rely on an earlier draft decision of the DRB.

The Planning Director determined that, with 83 conditions, the project would meet the site plan/design review criteria of BIMC 2.16.040. Specifically, City staff concluded that the proposed development would conform to the Comprehensive Plan, the Winslow Master Plan, and all applicable code provisions; would conform with the Island-Wide Transportation Plan; would be developed consistent with the street standards for an urban collector roadway in the Winslow Core, including a five-foot-wide right of way dedication conveyed to the City by a right-of-way deed, a six-foot-wide bike lane, concrete curb and gutter with adjacent three-foot planter strip, and a minimum five-foot-wide concrete sidewalk; and would be consistent with the purpose of the site design review process. City staff determined that the proposed development would be outside any critical area and shoreline area, and that no harmful or unhealthful conditions would likely result from the proposed site plan.

The City engineer found that the site plan would meet the decision criteria of BIMC 2.16.110.f.1.i, including detailed criteria for drainage, streets and pedestrian ways, water and sewer capacity, and compliance with the City Design and Construction standards. *Declaration of Heather Wright; Exhibit 1, Staff Report, pages 30 through 33; Exhibit 21; Exhibit 25.*

19. The Attorney for the Applicant, Nancy Rogers, submitted a legal memorandum addressing the site plan/design review criteria, which incorporated City staff's assessment of each criterion, as described above, and disputed the Planning Commission's site plan/design review findings. She urged approval of the application. *Exhibit 40.*

Conditional Use Permit Review

20. The Applicant's proposed development for an 87-room hotel in the MUTC-CC zone requires approval of a major CUP. A major CUP is the mechanism by which the City may require specific conditions on the development or use of land to ensure that designated uses or activities are compatible with other uses in the same zone and in the vicinity of the subject property. *BIMC 2.16.110.A*. The Applicant submitted materials in support of the CUP application, specifically addressing topics such as noise, traffic, parking, stormwater, the adequacy of infrastructure/utilities, and landscaping. Each of these elements of a CUP application was a focus at the open record hearing and is more thoroughly discussed below, followed by findings on the review of the CUP by the Planning Commission and City staff. *Exhibit 5 through 19*.

Noise

21. The City adopted noise levels established by Chapter 173-60 WAC. *BIMC 16.16.020*. The maximum permissible noise level from a source within a residential zone upon the property of another within a residential zone is 55 dBA⁸ between the hours of 7:00 a.m. and 10:00 p.m., and 45 dBA between the hours of 10:00 p.m. and 7:00 a.m. *BIMC 16.16.020; BIMC 16.16.040; WAC 173-60-040*. The maximum permissible noise level from a source within a commercial zone upon the property of another within a residential zone is 57 dBA between the hours of 7:00 a.m. and 10:00 p.m., and 47 dBA between the hours of 10:00 p.m. and 7:00 a.m. *BIMC 16.16.020; BIMC 16.16.040; WAC 173-60-040*. A violation of the noise regulations may result in a civil infraction, consisting of a warning if a prior violation has not been committed within the two-year period preceding the most recent violation, and consisting of a monetary fine if a prior violation has been committed within the two-year period preceding the most recent violation. *BIMC 16.16.050*. Noise violations are enforced by the police department and code enforcement officers. *BIMC 16.16.060*. Enforcement of noise regulations may be undertaken only upon receipt of a complaint by a person who resides, owns property, or is employed in the area affected by the noise. *BIMC 16.16.020; WAC 173-60-040*.
22. Of particular concern to the public is the sound level of any music that might be played outdoors in ceremony spaces proposed by the Applicant. As part of its CUP application, the Applicant submitted correspondence with Acoustical Consultant Michael Yantis about the potential noise impacts of the proposed development, including how outdoor music might impact surrounding property. Mr. Yantis noted that he did not have any sound level data for unamplified outdoor music, but he predicted a sound level at the southern boundary of the site to be 69 dBA without a bandshell. Mr. Yantis stated that a practical limit for barrier attenuation due to reflection from nearby surfaces to be 15 dBA, which would put a predicted sound level at the southern boundary to be 54 dBA, which

⁸ WAC 173-60-020.2 defines *dBA* as "the sound pressure level in decibels measured using the 'A' weighting network on a sound level meter. The sound pressure level, in decibels, of a sound is 20 times the logarithm to the base 10 of the ratio of the pressure of the sound to a reference pressure of 20 micropascals."

would be within the noise limitations during daytime hours and would exceed the limitations between the hours of 10:00 p.m. and 7:00 a.m. He also noted that the barrier attenuation could be less than 15 dBA based on multiple reflections off nearby buildings. Mr. Yantis suggested that the Applicant install a sound monitoring system to notify musicians when they are exceeding noise code limits. *Exhibit 19.*

23. In response to public comment, and to meet the criteria for approval of a CUP, the Applicant proposes to provide landscaping, green walls, and a bandshell and to enclose trash and recycling under a building to reduce noise impacts. Additional conditions proposed by City staff to reduce impacts from noise include informing the neighbors about events taking place on-site to the extent feasible; limiting solid waste pick-up to between 10:00 AM and 12:00 PM; enclosing solid waste facilities within the building, with pick-up occurring under the building; limiting delivery services at loading docks in the west wing of the building; constructing a solid six-foot-high wall or fence along the west property line abutting the townhome access drive; and planting additional vegetation along specific property lines. SEPA conditions require the Applicant to submit a monitoring report to the City, prepared by qualified professionals, after the first and second year following the certificate of occupancy for the building, as well as to track complaints. The City would use the monitoring reports to determine if additional administrative conditions should be imposed. *Exhibit 1, Staff Report, pages 13, 23, 24, 39, and 40; Exhibit 19; Exhibit 31.*

Traffic

24. The proposed development would front Winslow Way West and take access from either end of the site. An additional driveway would be provided for shuttle ingress/egress. Winslow Way is an east-west, two-lane collector and local access street, with a posted limit of 20 mph. To the east, the intersection of Winslow Way with Madison Avenue forms the division between Winslow Way West and Winslow Way East. *Exhibit 12.*
25. On behalf of the Applicant, and as part of its submittal for approval of a CUP, Heath & Associates, Inc., prepared a traffic impact analysis (TIA), dated April 2019. The TIA reviewed the proposed 87-guest-room hotel, with a restaurant, spa, and banquet rooms.⁹ The TIA determined that the existing level of service (LOS) at surrounding intersections and a roundabout during the weekday peak hours of travel to be LOS C or better.¹⁰ The TIA forecast that the weekday peak hour level of service with and without the project

⁹ The City Planning Commission reviewed the Applicant's proposal on July 5, 2019, which included an outdoor entertainment amphitheater/bandshell. *Exhibit 25.* The TIA did not include a review of this feature. *Exhibit 12.*

¹⁰ Level of Service (LOS) is a range from LOS A to LOS F with the former indicating the best operating conditions with low control delays and the latter indicating the worst conditions with heavy control delays. *Exhibit 12.*

would remain at LOS C or better except for the intersection of SR-305 and High School Road, which would remain at LOS D with the project. The TIA determined that the proposed project would generate approximately 41 AM and 52 PM peak-hour trips. The Applicant would be responsible for paying City traffic impact fees, with credit for the existing uses. The TIA did not recommend any mitigation other than payment of impact fees, but the MDNS conditions include several requirements related to mitigation of traffic impacts (*See Attachment B, Conditions 3-12. Exhibit 1, Staff Report, pages 28 and 29; Exhibit 12.*

26. In response to concerns that the TIA did not account for summer traffic patterns, Heath & Associates conducted traffic counts at the intersection of Madison Avenue and Winslow Way in June 2019. The Thursday PM peak count taken on June 20, 2019, showed 851 entering vehicles, and the Friday AM peak count taken on June 21, 2019, showed 504 entering vehicles. Heath & Associates concluded that the summer peak counts corroborated its analysis in the April 2019 TIA, which had relied on data, showing a PM peak count of 853 entering vehicles and an AM peak count of 593 entering vehicles on December 4, 2018. Heath & Associates also conducted a Saturday traffic count at the intersection in response to concerns that the TIA did not account for weekend traffic. The Saturday count taken on June 22, 2019, showed a peak in traffic between noon and 1:00 p.m., with 908 entering vehicles, which Heath & Associates opined was not a significant increase from the 851 entering vehicles in the December 4, 2018, weekday PM peak count. *Exhibit 15.*
27. The City Engineering Project Manager Mike Michael determined that the TIA submitted by the Applicant provided a thorough review of the proposed development's traffic impacts, which appropriately examined the maximum traffic impact of the proposed development, ferry traffic surges, and pedestrian effects on traffic delay projections. City staff determined that, with conditions, the traffic impacts from the proposed development would not be materially detrimental to other uses or property in the vicinity of the site. *Testimony & Declaration of Mike Michael; Exhibit 1, Staff Report, page 34.*

Parking

28. On behalf of the Applicant, and as part of its submittal for approval of a CUP, Walker Consultants prepared a shared parking analysis for the proposed project, dated March 24, 2018. The shared parking model recommended 179 parking spaces to accommodate peak parking demand, assuming all 7,359 square feet of event space is in use concurrently, as well as full occupancy of the hotel rooms (70 rooms were proposed at that time).

The Applicant provided a revised parking analysis, including a valet stacking analysis, on January 14, 2020, for a hotel with 87 rooms and event spaces of 5,880 square feet, a reduction from the 7,359 square feet used in the Walker Consultant analysis. The

Applicant calculated that 132 parking spaces would be required, with 59 parking spaces for the 87 rooms and 57 parking spaces for events, employees, and external patrons.

In a Winslow Hotel Parking Analysis Update, dated September 13, 2019, Walker Consultants recommended potential transportation demand management measures to reduce traffic impacts, including shuttle service to and from the ferry, subsidized transit for employees, availability of traditional and/or electric bicycles for hotel guests, and use of rideshare vehicles.

Exhibit 10; Exhibit 11; Exhibit 32.

29. The City engineer determined that the capacity of transportation facilities affected by the proposed development of 87 hotel rooms is equal to or greater than the capacity required to maintain the level of service standard for the impact of the development. City Engineer Peter Corelis issued a Certificate of Concurrency, dated December 9, 2019, based on the April 2019 TIA, with addenda dated July 2019.¹¹ *Exhibit 15.*
30. In its review of the proposed development, City Planning Department staff determined that the proposed 143 striped parking spaces, plus an additional 37 spaces through stacked parking by valet attendants, would provide sufficient on-site capacity for the proposed development, if a condition of approval limits the simultaneous use of the banquet and meeting rooms to 6,200 square feet. City staff noted that the Applicant would provide six disabled access parking spaces, 42 compact parking spaces, and eight electric vehicle charging stations, to comply with BIMC 18.15.020, and the Applicant would provide 36 bicycle spaces and 36 bicycles as part of an on-site shared bicycle program, in compliance with BIMC 18.15.030. *Exhibit 1, Staff Report, pages 28, 29, and 41.*

Stormwater

31. The Applicant's proposed stormwater system would capture site and roof run-off to a 42,000-gallon rainwater underground cistern for recycling, reusing approximately 500-700 gallons per day for irrigation. Excess runoff would be discharged to the Winslow Way West public storm water conveyance system. The Applicant would install permeable surface parking and driveways. The Applicant would submit to the City a Stormwater Pollution Prevention Plan, prepared by a civil engineer prior to construction activities, and a downstream analysis, to demonstrate that adequate capacity exists from the site to the main storm drain in Madison Avenue. *Exhibit 1, Staff Report, pages 13, 37, and 44.*

¹¹ Exhibit 14 is also a Certificate of Concurrency, issued June 6, 2019, based on a Heath & Associates traffic study, dated October 2019.

Utilities and Services

32. City staff reviewed the application and determined that the proposed development would be served by adequate public facilities, including roads, water, fire protection, sewer, and storm drainage. The City of Bainbridge Island Police Department would provide police services to the property. Bainbridge Island Fire District would provide emergency fire services to the property. The City would provide water and sewer services. The City issued a non-binding commitment for water and sewer capacity. Additionally, water service would be provided by rainwater recycling. The proposed development would use an 8-inch city sewer main located at the southeast property corner to connect to the public sewer system. The Applicant would extend the sewer main approximately 300 feet north, through and across the property along the eastern boundary, to serve the site and adjacent properties. An on-site sewage system is being considered to help reduce impact on the city sewer system. Bainbridge Island Fire Department submitted written comments recommending that the proposed development comply with the adopted Fire Code by installing fire sprinklers and alarms, providing a 1,500 gpm fire flow, and allowing aerial apparatus access of not less than 16 feet in drivable width, as required for a building over 30 feet high. *Exhibit 1, Staff Report, pages 6, 15, 34, and 43; Exhibit 17; Exhibit 18.*

Landscaping

33. City landscape requirements require 30 tree units per acre, or 55.8 tree units for this project. *BIMC 18.15.010.G.4.* The Applicant would retain 101.4 tree units and proposes an additional 137 new tree units for a total of 238.4 tree units. The Applicant has submitted a tree retention and landscaping plan that must be approved by the City prior to any construction. *Exhibit 1; Staff Report, pages 27, 45, and 46; Exhibit 8.f.*
34. On behalf of the Applicant, and as part of its submittal for approval of a CUP, Tree Solutions, Inc., prepared a Preliminary Arborist Report (PAR), dated December 27, 2018. The PAR inventoried and assessed 43 trees at 253 Winslow Way West. The PAR concluded that 31 trees qualify as significant trees, four trees qualify as landmark trees, and 28 trees qualify as part of a tree stand. The proposed development would remove 10 significant trees and two landmark trees. Nine significant and one landmark tree would be retained. The PAR included tree protection specifications and root pruning recommendations. *Exhibit 29.*
35. On behalf of the Applicant, and as part of its submittal for approval of a CUP, Ribeiro Consultants prepared a Tree Health Evaluation, dated November 23, 2018, for a Giant Sequoia located on the site. The evaluation identified the tree as the largest in the downtown area, with a diameter of 62.5 inches at breast height, a height of 104 feet, and an average canopy spread of 44 feet. The entire area around the tree is covered with concrete slabs and impervious pavement. A Douglas fir is located adjacent to the Sequoia. The evaluation recommended actions to protect the trees, including removing the concrete foundation and other impervious surfaces around the trees, cabling terminal

co-dominant stems to avoid breakage, applying a treatment to help prevent infections by wood decay fungi, and using a root barrier on the building side of the tree. The evaluation also included recommended tree protection protocols for use during construction. *Exhibit 28.*

*Planning Commission
Review of CUP Application*

36. The City Planning Commission reviewed the Applicant’s proposal at four meetings and ultimately voted to recommend denial of the proposal.¹² Specific to the criteria for approval of a CUP, the Planning Commission determined that the proposed development did not comply with several CUP criteria listed in BIMC 2.16.100.F. Specifically, the Planning Commission found that the proposed development would not be compatible in design, character, and quality of development in the vicinity because the proposed floor area ratio (FAR) bonus would be used to support facilities that would not provide greater flexibility in housing, advance Comprehensive Plan goals, or encourage downtown living. The Planning Commission also found that the proposed development would not be in accord with the Comprehensive Plan because it would provide services primarily for guests of the hotel. Additionally, the Planning Commission found that there was insufficient analysis of noise and traffic impacts of the proposed development to determine whether it would satisfy several CUP criteria. *Exhibit 1, Staff Report, page 9; Exhibit 25.*

City Staff Review of CUP Application

37. The Planning Director, the City engineer, and other City staff reviewed the CUP application as required by BIMC 2.16.110.E.4, and determined that, as conditioned, the project would satisfy the decision criteria of BIMC 2.16.110.F. The Planning Director and City staff found that the proposed development would meet design guidelines and be compatible with development in the vicinity; would be served by adequate public facilities; would not be materially detrimental to uses or property in the vicinity; would conform with the Comprehensive Plan, Winslow Master Plan, and Island-Wide Transportation Plan; would comply with City code; and would implement noise mitigation measures and be required to comply with noise regulations. City staff also noted that pedestrian and bicycle circulation would meet all applicable City standards and that the Applicant obtained a certificate of concurrency following submittal of its TIA. *Exhibit 1, Staff Report, pages 33 through 37.*

¹² Under BIMC 2.16.110.E.3, the Planning Commission is tasked with reviewing major conditional use permits for consistency with the City’s design review guidelines, requirements of the zoning code, and consistency with the Comprehensive Plan. The Planning Commission’s findings concerning consistency with the City’s design review guidelines are addressed here, in Finding 36. Under BIMC 2.16.110.E.2, the DRB is also tasked with reviewing major CUPs for consistency with the City’s design review guidelines. Because the DRB’s findings concerning design review guidelines are already addressed in Finding 16, that information is not repeated here.

38. The City engineer determined that the proposed development would conform to drainage regulations so that no undue burden on water quality would be created by the development, that pedestrian ways align with the streets serving the proposed development and are adequate to accommodate increased traffic, that adequate capacity exists in the water and sewer system for the proposed development, and that the proposed development would conform to the “City of Bainbridge Island Engineering Design and Development Standards Manual.” *Exhibit 1, Staff Report, page 37; Exhibit 15; Exhibit 18.*
39. The Applicant’s attorney submitted a legal memorandum addressing the CUP criteria, which incorporated City staff’s assessment of each criterion as described above and disputed the Planning Commission’s CUP findings. *Exhibit 40.*

Written Public Comment on the Development Proposal
Site Plan/Design Review & CUP Applications

40. The City received comments from agencies in response to its notice materials. The Multi-Modal Transportation Advisory Committee (MTAC) commented that the project should keep sidewalks level across driveways, consider additional street trees, move the sidewalk to the back edge of the right-of-way, ensure that the sidewalk is at least 6 feet wide, and ensure that, where the building meets the sidewalk, there is an 18-inch minimum shy zone. The MTAC also questioned whether the project would require on-street parking. The Bainbridge Island Fire District Fire Marshal recommended approval with conditions on May 1, 2019. The City Building Official provided preliminary comments on May 7, 2019, noting that a full review would be performed during the building permit application process. The City Public Works Development Engineer recommended approval with conditions on June 5, 2019; issued a Certificate of Concurrency on June 6, 2019; and issued an updated Certificate of Concurrency on December 9, 2019. The City Department of Public Works provided a non-binding commitment for water and sewer system capacity letter on June 7, 2019. City staff reviewed the comments received and incorporated the recommendations for conditions offered by other department and agencies into its recommend list of conditions for approval of a CUP. *Exhibit 1, Staff Report, pages 8 and 22; Exhibits 14 through 18; Exhibit 22; Exhibit 27.*
41. The City received numerous written comments from the public in response to its notice materials.¹³ These comments generally related to the following topics:
- **Building Design and Scale:** Comments on this topic expressed concerns that the proposed hotel would have too many rooms, that the structure would be too large, that the project site would be too small for the hotel, that the hotel would exceed

¹³ The City received over 300 public comments on the proposal. *Exhibit 1, Staff Report, pages 18 and 19; Exhibits 33 through 35; Exhibit 37; Exhibit 38.*

two stories, that the hotel's height and building type would not be harmonious with the appearance of downtown, and that the public would not see the redwood that would be incorporated into the building design.

- **Preserving the Character of Winslow:** Comments on this topic expressed concerns that the project would change the experience of the Island, that inadequate parking and traffic impacts would compromise the scale of Winslow, that the project would lead to a loss of the small-town feel of Winslow, that the project would create a frenzied and busy environment, and that the project would negatively impact an already overcrowded downtown.
- **Impacts to Adjacent Residences:** Comments on this topic expressed concerns about the location of the development near dense residential areas and quiet side streets and that the proposed project is not sympathetic to existing residences and does not provide landscaping between building and residents on the west side for screening, that the project would diminish the value of adjoining homes, and that the project would be detrimental to the long-term mental and physical health of citizens and guests.
- **Not a Preferred Use:** Comments on this topic expressed concerns that the project site should be limited to residential uses, that a hotel district should be provided in another location, and that the proposed development would be incompatible with other uses in the vicinity. Comments also expressed concerns that the proposed hotel would be located next to homes, condos, senior living, community gardens, schools, and small commercial businesses. Additionally, comments raised concerns that the project would not contribute to local businesses, that the hotel would provide no local benefits, that employees of the hotel would not live on the Island, that the trash would be left behind from events, and that the area has no need for the proposed banquet space, meeting rooms, or a restaurant.
- **Economic Impact:** Comments on this topic expressed concerns that the hotel business could fail and become an abandoned eyesore. Comments also expressed concerns that other hotels on the Island are not at capacity, that the project would displace the Seattle Children's store, and that it would reduce the quality of existing stores.
- **Parking and Traffic Impacts:** Comments on this topic expressed concerns that the hotel would reduce the supply of off street parking, that the traffic study failed to consider summer traffic patterns, that the project would result in more traffic congestion and accidents, that the intersection of Madison needs a traffic signal, and that the project did not consider pedestrian and bike safety. Comments also suggested that the project incorporate a shuttle service to reduce traffic impacts.
- **Noise, Light, and Odor Impacts:** Comments on this topic expressed concerns about noise impacts from the proposed outdoor courtyard, outdoor events, amplified music, and service drive. Other comments on this topic suggested noise monitoring, enclosing the loading dock and drive area, and installing sound

barriers around external HVAC units. Comments also expressed concerns about light impacts and restaurant exhaust and cooking odors.

- **Utilities and Environmental Impact:** Comments on this topic expressed concerns about water supply, sewage capacity, aging pipes, on-site septic odor, woodboring impacts, landfill impacts, and strains on aquifers.
- **Support for the Project.** Several comments expressed support for the proposal, noting that the hotel would have aesthetically pleasing qualities and that it would provide a community space, provide a place for families of locals to stay on the Island, support local business, provide jobs, and utilize environmentally sound development practices.

Exhibit 1, Staff Report, pages 19 through 22; Exhibits 33 through 35; Exhibit 37.

42. On behalf of the Winslow Neighbors, Ross Tilghman, Tilghman Group, prepared a memorandum, dated June 10, 2019, analyzing the Applicant's TIA. In summary, the following concerns were raised by Mr. Tilghman:
- The TIA does not evaluate Saturday transportation demands when the project would generate its highest volumes.
 - The TIA's weekday trip generation does not account for use of the event space.
 - The TIA's findings are based on low-volume winter traffic counts, not on higher volume summer traffic.
 - Ferry traffic surges have not been adequately considered.
 - The project's compliance with zoning requirements for parking remains unknown, but may be between 160 and 195 spaces.
 - It is unclear how and where the project can secure off-site parking.

Exhibit 43.A-1.

Mr. Tilghman also prepared a memo, dated July 11, 2019, with comments on the updated traffic counts submitted by the Applicant. Mr. Tilghman commented that the June and December traffic counts were comparable, that Ferry ridership is greater in summer than in winter, that greater traffic congestion occurs east on Winslow Way between SR-305 and Erickson Avenue and should be further evaluated for summer traffic conditions, that the highest traffic volumes occurred on Friday between 4:00 and 5:00 PM and on Saturday between noon and 1:00 PM, and that the summer traffic count occurred when school was still in session. *Exhibit 43.A-3.*

Mr. Tilghman prepared a follow-up memorandum, dated September 30, 2019, after reviewing the project's separate parking analysis, dated March 24, 2018; the supplemental analysis, dated June 12, 2019; and other material. In summary, he raised concerns that the proposed development's compliance with zoning requirements for parking remained unknown; that the parking analysis omitted restaurant and banquet employee parking demands; that it remained unclear whether the proposed development would be able to secure off-site parking; that the TIA did not evaluate Saturday

transportation demands; that the TIA's weekday trip generation did not account for event space use; that the supplemental study's summer counts should have evaluated traffic volumes in July through September, rather than in June; that the TIA's LOS analysis omitted pedestrian volumes and their effects on traffic operations; and that the TIA failed to adequately consider ferry traffic surges.

Exhibit 43.A-2.

43. On behalf of Winslow Neighbors, Adam Jenkins, a principal noise consultant with Greenbusch Group, Inc., submitted an acoustical review memorandum. He concluded that the City's proposed conditions for monitoring noise impacts would be insufficient because there are several fixed elements for the project that could not be retrofitted without major reconstruction. Mr. Jenkins also noted that the Applicant had not conducted any noise study to determine the potential noise impacts from the proposed development.

Exhibit 45.

44. City staff assessed the written comments submitted on the proposal and, in response, stated that the proposed development would be visually split into three elements and would therefore comply with design guidelines for buildings exceeding 10,000 square feet; would comply with dimensional standards for lot coverage, floor area ratio (FAR), setbacks, and building height; would incorporate elements that capture the area's character and standard for quality development; would mitigate impacts to adjacent properties, through landscape buffers, tree retention, the location of the hotel entrance, and a minimum six-foot-high wall along the west property line; and would provide all parking on-site. City staff also explained that hotels are a permitted use in the Central Core district and that the CUP process would allow the City to impose conditions to ensure compatibility with other uses, noting that such conditions would require the proposed development to provide frontage improvements, new sidewalks, and a bike lane, and to ensure the project meets noise standards with monitoring requirements. Additionally, City staff noted that the TIA concluded that no mitigation for traffic impacts would be required and that the proposed development would maintain the existing grade of the site, exceed tree retention and landscaping requirements, have permeable surface parking and drives for natural drainage, and incorporate low impact design (LID) and green design features. *Exhibit 1, Staff Report, pages 19 through 22; Exhibits 33 through 35; Exhibit 37.*

Hearing Testimony

45. Thirty-seven individuals testified at the open record hearing on the application, including seven expert witnesses, and three attorneys presented argument at the hearing. Consideration of all testimony at the hearing is an important step in making a decision on an application. Information is contained in documents, as well as in testimony from the Applicant, the City, and the public. A summary of the hearing testimony follows.

*Findings, Conclusions, and Decision
City of Bainbridge Island Hearing Examiner
Winslow Hotel SPR/CUP
No. PLN 50880 SPR/CUP*

City Testimony

46. City Planning Director Heather Wright testified generally about the application review process, explaining that her role as Planning Director is to review the project, to make a decision on SEPA, and to make a recommendation to the Hearing Examiner based on the City Comprehensive Plan, applicable development regulations, and recommendations from the Design Review Board, the Planning Commission, and the public. She stated that she had examined the project site and neighboring properties with the City review team to evaluate whether the project would meet code requirements, whether it would be consistent with the City Comprehensive Plan, and whether impacts of the project and community concerns could be adequately mitigated. Ms. Wright discussed the City Comprehensive Plan's guiding principle of preserving the special character of downtown Winslow's small-town atmosphere. She explained that this guiding principle is implemented through Code regulations and design guidelines, which City staff have determined have been complied with by the proposed development. *Testimony of Ms. Wright.*
47. City Planning Manager David Greetham testified generally about the project through a slide presentation, admitted as Exhibit 39. He noted that a 15-room hotel is a permitted use outright in the Mixed Use Town Center - Central Core zone, but that the Applicant's proposed 87-room hotel required a CUP. Mr. Greetham highlighted aspects of the project that included the proposed lot coverage, floor area ratio, building height, tree retention, and landscaping, and he discussed how the proposed project, with recommended conditions, would be consistent with the City's Comprehensive Plan and would comply with applicable code requirements. He noted that the Applicant's site plan depicted in Exhibit 7 reflected the final site plan reviewed by the DRB, which had reduced the west wing of the proposed hotel to accommodate parking and had reduced the east wing to accommodate screening. Mr. Greetham also noted corrections to the City staff report.¹⁴ *Testimony of Mr. Greetham.*
48. City Engineering Project Manager Mike Michael testified generally about his team's review of the technical aspects of the project's public infrastructure impacts, particularly traffic impacts, the validity of the Applicant's parking analysis, and the proposed frontage improvements' impacts to non-motorized activity. He noted that the City originally issued a certificate of concurrency to the Applicant on June 6, 2019, but then requested that the Applicant submit an additional traffic impact analysis in response to public comment; following submittal of the additional traffic impact analysis, the City issued a second certificate of concurrency on December 9, 2019. Mr. Michael explained that the

¹⁴ Specifically, Mr. Greetham noted a typographical error at page 26 of the report stating "201-2017" instead of "2015-2017" and an error at 28 of the report that correctly stated the number of proposed parking spaces but incorrectly listed the figures used to calculate the total proposed parking spaces. *Exhibit 1, Staff Report, pages 26 and 28; Testimony of Mr. Greetham.*

Applicant's traffic analysis and supplemental analysis showed a slight increase to PM peak-hour trips as a result of the project, but that mitigation would not be required because the increase did not affect LOS standards. He noted that the Applicant's traffic analysis had examined the maximum draw of the proposed hotel, including traffic generated as a result of hotel events. Mr. Michael stated that the Applicant's analysis of traffic generated from ferry service was included in its analysis of base existing traffic in the area. Mr. Michael noted that City code does not provide parking requirements for this type of project, but that City staff had reviewed and agreed with expert analysis of the parking needs for the proposed hotel and associated facilities. He also noted that the Applicant had agreed to make frontage improvements beyond the project site. *Testimony of Mr. Michael.*

Applicant Testimony and Legal Argument

49. Attorney for the Applicant, Nancy Rogers, presented an overview of the project and argued that the project would be compatible with the character and quality of development in the vicinity of the site. Ms. Rogers noted that the DRB had unanimously recommended approval of the project and that compliance with the Living Building Challenge cannot be made as a condition of approval because compliance with the challenge would be evaluated after project completion. She asserted that the Hearing Examiner is not required to follow the Planning Commission's recommendation to disapprove the project. Ms. Rogers argued that the project would be consistent with the City's Comprehensive Plan because it would meet or exceed all requirements under City code. She further argued that the project would not have any material detriment to the MUTC-CC zone. Regarding noise impacts, Ms. Rogers noted that hotels are incentivized to provide a quiet environment for guests and that the hotel would be required to comply with state and local noise regulations. *Argument of Ms. Rogers.*

50. Michael Burns testified that he is a long-time resident of Bainbridge Island and discussed specific features of the proposed hotel and how those features would be compatible with the special character of downtown Winslow. He noted that the project would pursue the Living Building Challenge and that, if successful, it would be the first hotel to achieve the challenge. Mr. Burns stated that the hotel and courtyard would be open to the public. He presented an email correspondence with a Columbia Hospitality consultant that detailed the approximate number and nature of deliveries and garbage/recycling collections that the proposed hotel would be expected to receive each week, which was admitted as Exhibit 41; according to the correspondence, the hotel would be expected to receive a total of approximately 18 to 22 deliveries and garbage/recycling collections each week. *Testimony of Mr. Burns.*

51. Architect James Cutler testified generally about the project through a slide presentation, admitted for illustrative purposes as Exhibit 42. He discussed aspects of the proposed building design and of existing neighboring property uses, noting that the building would

be designed to both meet the Living Building Challenge and be harmonious and compatible with development in the vicinity. *Testimony of Mr. Cutler.*

52. Architect Bruce Anderson testified generally about the project, noting that the project was in the highest density zone, it would fully comply with land use code, and the Applicant was not seeking any variances. He noted that the other aspects of the hotel facility, including the restaurant, spa, and wedding venue space, were all permitted uses in the zone. Mr. Anderson explained that, under applicable City code, building height limits are measured from average grade to average pitch of a sloped roof, and he asserted that the project would comply with the building height limits. He stated that garbage and recycling collection would be in an enclosed underground space to mitigate noise impacts and that the proposed 143 on-site parking spaces would exceed design requirements. *Testimony of Mr. Anderson.*
53. Traffic consultant Greg Heath testified that Heath & Associates, Inc., prepared two versions of a TIA for the project, and explained the methodology used to evaluate the traffic impacts of the proposed hotel facility. He noted that the analysis considered all uses for the proposed hotel facility, including the restaurant, banquet rooms, and meeting spaces. Mr. Heath concluded that traffic generated by the hotel would not be detrimental to the current LOS in the project area. *Testimony of Mr. Heath.*
54. Parking consultant Jeff Weckstein testified that Walker and Associates, Inc., conducted a parking needs analysis for the project, explaining the methodology used to conduct the analysis. He noted that the analysis had evaluated the parking needs for 100 percent occupancy of the hotel, with simultaneous occupancy of half of the event space, and concluded that 129 spaces would be required. Weckstein stated that the proposed 139 parking spaces would exceed this need and would be adequate to serve maximum occupancy of the hotel facility when used in conjunction with valet/stacked parking services. He concluded that the proposed parking supply would not be materially detrimental to neighboring vicinities of the project site. *Testimony of Mr. Weckstein.*

Public Testimony & Perspectives

55. Jon Quitslund testified that he is a member of the Planning Commission that reviewed the proposed development. He described the Planning Commission's role in making recommendations for approval or disapproval of an application. Mr. Quitslund requested that the Hearing Examiner follow the recommendation of the Planning Commission to deny the CUP for the reasons stated in its recommendation, noting that the Planning Commission concluded that no reasonable conditions could be imposed to mitigate the project's impacts to neighboring vicinities. *Testimony of Mr. Quitslund.*
56. Attorney David Bricklin argued against the proposal on behalf of a citizens group, the Winslow Neighbors. He described the Winslow Neighbors group and its position in

opposition to the project as currently proposed. Mr. Bricklin argued that, under BIMC 2.16.110, the Hearing Examiner is required to follow the recommendation of the Planning Commission unless certain criteria are satisfied. He noted that expert and lay testimony demonstrate that: the proposal would not be consistent with the City Comprehensive Plan; the Applicant's traffic impact analysis was insufficient, for failing to account for ferry traffic surges; the project would not meet the requirements for a FAR bonus; the Applicant should have prepared a noise study to determine impacts; the City staff report failed to adequately address CUP approval criteria; and the DRB failed to provide findings of fact regarding how the project would comply with design guidelines, specifically concerning maximum façade length and maximum building height.

Argument of Mr. Bricklin.

57. Transportation Planner Ross Tilghman testified that he reviewed the Applicant's TIAs on behalf of Winslow Neighbors and concluded that the TIAs were insufficient because they omitted weekday peak event traffic and did not evaluate traffic impacts with reference to the likely population at hotel events. He also noted that the TIAs failed to consider LOS impacts to the intersection of Winslow Way West and Ericksen Ave NE, ferry surge traffic, delays caused by pedestrian traffic, and whether the proposed size of the entry plaza would be sufficient to prevent delays on the adjoining street. Mr. Tilghman disputed the demand calculations used to determine the off-site parking needs of the project because it did not account for employee parking demands or restaurant parking demands. He concluded that the parking needs of the project would require 169 vehicle spaces for maximum occupancy. Mr. Tilghman offered a memorandum addressing transportation impacts, admitted as Exhibit 44. *Testimony of Mr. Tilghman.*
58. Adam Jenkins testified that he is a principal noise consultant with Greenbusch Group, Inc., which analyzed environmental noise elements of the proposed project for the Winslow Neighbors group. He noted his recommendation to the Planning Commission that a noise study should have been conducted to provide a quantifiable demonstration of whether the conditional use requirements would be satisfied. Mr. Jenkins explained that computer modeling software could predict the noise impacts of various aspects of the project, including the exterior mechanical equipment, on-site pedestrian traffic, the proposed band shell, garbage collection, and back-of-house deliveries. He stressed that such a study would demonstrate whether the project would comply with noise regulations. *Testimony of Mr. Jenkins.*
59. John Adams testified that he is a licensed architect and reviewed the Applicant's proposed project design for the Winslow Neighbors. He noted his opinion that the proposed design did not conform with design guidelines regarding maximum façade length, building articulation, on-site pedestrian passageways, maximum building footprints, compatibility with neighborhood characteristics, upper level setbacks, or roof design. *Testimony of Mr. Adams.*

60. In addition to the expert testimony described above, several members of the public testified regarding their concerns with the proposed project, which included:
- **Concerns with vehicular traffic impacts.** Regarding vehicular traffic concerns, several members of the public testified about the existing traffic problem in the vicinity of the project site and about how residents tend to avoid the downtown core because of the existing traffic conditions. Other members of the public noted that traffic impacts from the project would extend beyond the immediate vicinity of the project site because residents and visitors would use detour routes to avoid traffic on the corridor streets. *Testimony of Kathryn Lafond; Testimony of Barbara Kirk; Testimony of Phyllis Carlyle; Testimony Gail Hiestand; Testimony of Wendy Hinman; Testimony of Jack Sjolseth; Testimony of Debbie Hollyer; Testimony of Caroline Clarke.*
 - **Concerns with pedestrian traffic impacts.** Regarding pedestrian traffic concerns, members of the public raised concerns about increased pedestrian traffic impacts on vehicular traffic and the project's impact on walkability of the neighborhood. *Testimony of Ms. Lafond; Testimony of Ms. Carlyle; Testimony of Ms. Hiestand; Testimony of Mr. Sjolseth; Testimony of Cheryl Crist; Testimony of Joanna Pyle.*
 - **Concerns with parking demands.** Regarding parking demand concerns, members of the public testified that parking availability is an existing problem in the area and that residents avoid downtown Winslow because of the lack of available parking. *Testimony of Ms. LaFond; Testimony of Ms. Kirk; Testimony of Ms. Carlyle; Testimony of Ms. Hollyer.*
 - **Concerns with noise impacts.** Several members of the public testified to their concerns that noise from the hotel would negatively impact residential neighbors of the hotel, specifically noise from wedding events, hotel and event guests, delivery services, garbage collection, and exterior mechanical equipment. Members of the public also expressed concerns with the ability to enforce noise regulations, noting the current limited ability to enforce those regulations. Members of the public also remarked that design elements to reduce noise need to be implemented prior to construction. *Testimony of Ms. Carlyle; Testimony of Pam Cole; Testimony of Scott Schirmer; Testimony of Dave Mackenzie; Testimony of Ms. Hollyer; Testimony of Ms. Clarke; Testimony of Maradel Gale; Testimony of Sheila Curwen.*
 - **Concerns with building design.** Several members of the public expressed concerns with the proposed building design and the process by which the DRB approved the proposed design. Specifically, members of the public raised concerns with the proposed building size, length of the façade, pedestrian passageways, and building height with respect to the proposed roof design. *Testimony of Ms. Carlyle; Testimony of Mr. Quitslund; Testimony of Cindy*

Bellas; Testimony of Ms. Hiestand; Testimony of Kjell Stoknes; Testimony of Roger van Gelder; Testimony of Robin Simons.

- **Concerns with the project’s compatibility with the City Comprehensive Plan.** Several members of the public expressed concerns about the project’s compatibility with the City Comprehensive Plan, particularly in regard to the hotel’s fit with the unique characteristics of the downtown Winslow neighborhood. *Testimony of Ms. Hiestand; Testimony of Jack Sheridan; Testimony of Ms. Crist; Testimony of Mr. Stoknes; Testimony of Ms. Gale; Testimony of Ms. Pyle; Testimony of Ms. Simons; Testimony of Fran Korten.*
- **Concerns with economic impacts to neighboring businesses.** Members of the public expressed concerns with the project’s economic impacts to neighboring businesses. Members of the public noted that other hotels and event spaces in the vicinity are currently underutilized, that traffic and parking impacts will cause residents to shop outside of the downtown area, that only a small portion of the economic benefits of the hotel will go to local retail merchants, and that the development of the hotel will lead to more large-scale business development in the area. *Testimony of Ms. Lafond; Testimony of Ms. Kirk; Testimony of Natalia Ilyin; Testimony of Mr. Sheridan; Testimony of Ms. Hollyer; Testimony of Ms. Simons.*
- **Other concerns.** Additionally, members of the public raised concerns with the project overtaxing existing emergency medical services and with the project’s impacts to sewage services. *Testimony of Ruth Urbach; Testimony of Ms. Hinman.*

61. Several members of the public testified in support of the project, noting that the proposed hotel and associated facilities would bring needed lodging facilities to the area, generate jobs, provide a community gathering space, incorporate environmentally sound building practices, be consistent with the Comprehensive Plan, use local talent to meet local needs, and serve the needs of a growing community. *Testimony of Allison Davy; Testimony of Holly White; Testimony of Priscilla Zimmerman; Testimony of Ed Cannard.*

Post-Hearing Submittals

62. At the conclusion of the open record hearing, the Hearing Examiner entered an order permitting Ms. Carlyle and Attorney Bricklin to submit certain documents for the record by January 24, 2020, permitting the attorneys for the Applicant and the City to submit a response to public testimony by January 31, 2020, and permitting the attorneys for the Applicant, for the City, and for the Winslow Neighbors to submit a request to reopen the hearing by February 7, 2020. *Post-Hearing Order, dated January 24, 2020.*
63. The Applicant filed the following declarations pursuant to the January 24, 2020, Post-Hearing Order:

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- a. Greg Heath submitted a declaration that stated he had prepared the TIA for the project. In response to testimony regarding the effect of Saturday traffic impacts, he noted that the no data is available regarding Saturday peak hours or indicating that hotel peak traffic would occur at the same time as other Saturday peak traffic. Mr. Heath states that professional traffic reports focus on traffic impacts during the PM peak hour because it is the known time of the week when maximum street volumes generally occur. In response to testimony about the Institute for Transportation Engineers (ITE) Trip Generation Manual's definition of hotel, Mr. Heath noted that the ITE is the industry standard and includes supporting facilities in its definition of hotel, such as banquet facilities and restaurant activity traffic. In response to testimony about the effect of ferry traffic, Mr. Heath noted that the AM and PM field counts in the TIA were taken over two hours and included ferry traffic over each time period. He further noted that the LOS analysis accounted for the ferry surge by showing lower peak-hour factors, explaining that the peak-hour factor is used in traffic engineering analysis to focus more traffic in to the 15-minute window that characterizes ferry traffic. In response to testimony about the pedestrian traffic impacts, Mr. Heath noted that pedestrian movements have little effect on intersection operations. In response to testimony about event traffic impacts, Mr. Heath noted that the project is conditioned to monitor event traffic for two years to provide additional data that could lead to additional conditions if a problem becomes evident. In response to comments that the TIA did not analyze impacts at the Winslow Way/Erickson intersection, Mr. Heath noted that the City did not require analysis of this intersection because it is a minor T intersection located between two larger intersections that were both included in the TIA analysis. He concluded that the TIA shows that the project would not create significant traffic impacts.

- b. Jeff Weckstein submitted a declaration that stated he had prepared the parking needs analysis for the project. In response to concerns raised about the proposed on-site parking spaces not meeting zoning requirements, he noted that City code does not specify a minimum parking requirement for hotels. In response to concerns that the parking analysis failed to account for employee parking demands, Mr. Weckstein noted his opinion that the employee drive ratio assumptions used to analyze parking needs were appropriate. In response to concerns about valet service availability, he noted that valet services would be arranged in accordance with the hotel's event schedule to anticipate parking needs. Mr. Weckstein further noted that, if the proposed parking supply would not be adequate to capture the site's parking demands, SEPA mitigation monitoring conditions would provide a backstop against parking spillover by requiring the hotel to make adjustments or risk losing its ability to host concurrent events.

- c. Bruce Anderson submitted a declaration that stated he is one of the architects working on the project. In response to testimony raising concerns about the project meeting design guidelines, he noted that the design guidelines provide for flexibility and are not required to be strictly enforced. Regarding the proposed façade length, Mr. Anderson states that the east and west wings of the building are not included within the common definition of a building façade because they are not the front of the building facing a street. He further states that the building façade along Winslow Way is broken into pieces that are each less than 128 feet in length and that the main entry is designed to be open through the building, connecting the street to the courtyard during favorable weather. In response to concerns about adequate articulation of the east and west wings of the building, Mr. Anderson noted that the building wings demonstrate articulation through patterns of fenestration and expression of structural bays. In response to concerns about pedestrian passageways, Mr. Anderson states that such passageways are recommended but not required. In response to concerns about building size, Mr. Anderson states that the proposed hotel is visually split into wings and that the guidelines do not require that every building module must be 10,000 square feet or less. In response to concerns about upper level setbacks, Mr. Anderson noted that the overall building forms of the façade vary in angles and positions to the street to assure a pedestrian sense of scale, light, and air, which meet the intent of the setback guidelines. In response to concerns about roof design, Mr. Anderson noted that the hotel would use a shallow-pitched shed roof for the installation of solar panels as allowed by applicable design guidelines. He further noted that the project would provide sufficient distance and view protection measures to provide an adequate transition to the R-8 zone. In response to concerns raised about the project's noise impacts, Mr. Anderson noted that outdoor music performances already occur in the downtown Winslow area, that the courtyard and bandshell would be designed to keep courtyard activity noise internal to the hotel, and that the hotel is intended to be designed to avoid external mechanical equipment on the roof.
- d. Michael Burns submitted a declaration that stated he is the owner of the site and developer for the project. In response to concerns with noise impacts of the project, he requested that the Hearing Examiner impose the following condition for approval:
- Prior to or together with its building permit application, the Applicant shall provide to the City a description of changes to the garbage and recycling pick-up area designed to provide additional noise protection. These changes may include enclosing the garbage and recycling pick-up area by adding sound protective garage doors, or providing other noise protective or operational measures. Prior to or together with its building permit application,

the Applicant shall also provide to the City an analysis confirmed by a qualified noise professional that the projected noise from garbage and recycling trucks will meet applicable City noise standards.

In response to concerns regarding the difference between general “green” building practices and the Living Building Challenge, Mr. Burns asked the Hearing Examiner to add language to City staff’s recommended Condition 30, as underlined below:

30. The Applicant shall implement, where feasible, green building practices. The Applicant shall provide information to the city with the associated building permit applications detailing which green building standards were pursued, which were rejected as infeasible and which were incorporated into the building design. Without limiting the foregoing, the Applicant shall continue to pursue the Living Building Challenge, and provide a report on those efforts together with the associated building permit applications.

Mr. Burns also stated that the primary use of the shuttle van or vans would be to meet arriving guests at the Ferry Terminal and to return guests to the Ferry Terminal. He noted that the shuttle vans may also be available to transport guests to local sites and to transport employees from the Ferry bus terminal.

Declaration of Greg Heath; Declaration of Jeff Weckstein; Declaration of Bruce Anderson; Declaration of Michael Burns.

64. The City filed the following post-hearing declarations:
- a. City Engineering Manager Mike Michael submitted a declaration, which stated that the format and content for the project’s TIA was consistent with methodologies and analysis used to establish LOS in the Island Wide Transportation Plan (IWTP) and that City staff have used such methodologies as a basis for accepting “thorough” TIA reports since at least 2015. In response to concerns that the TIA relied on ITE trip generation rates for hotels that were too low for hotels with restaurants, spas, and banquet facilities, he noted that the ITE trip generation rates are the industry standard and are universally used by jurisdictions throughout Washington that conduct traffic analyses. Mr. Michael further noted that the definition of hotel in the ITE manual includes hotel supporting facilities, such as restaurants, cocktail lounges, and meeting and banquet rooms, as well as limited recreational facilities, such as pools, fitness rooms, and retail shops. In response to concerns about the TIA not considering ferry surges or pedestrian traffic, Mr. Michael stated that ferry traffic surges are accounted for in the traffic volumes used in the TIA for LOS because the counts

were taken every fifteen minutes during the AM and PM peak hours and that pedestrian-caused traffic delays are accounted for in the TIA's delay projections. In response to parking concerns, he noted that MDNS conditions would require all parking to be contained on-site and would impose limits on room occupancy and events if off-site parking becomes an issue.

- b. City Planning Director Heather Wright submitted a declaration, which stated that the City code does not require the Hearing Examiner to adopt the Planning Commission's recommendation to deny the applications. She noted that, in making her determination as Planning Director, she relied on the DRB's signed, final findings, which determined the project was not proposing any departure from the design guidelines, but that the Planning Commission appeared to have relied on the DRB's draft findings, not its final findings.
- c. City Planning Manager David Greetham submitted a declaration that stated design guidelines are intended to be flexible. In response to concerns that the project did not meet design guidelines for maximum façade length, Mr. Greetham noted that the face of the hotel would be divided into three sections and that the visual and physical access to the courtyard open space would meet the general intent of the façade design guideline. In response to concerns about the proposed roof design, Mr. Greetham noted that the over-arching design principle for development in the Central Core district focuses on building appearance from a street level. He also noted the proposed roof design would meet the intent of the roof design guidelines when accounting for flexibility afforded to green building elements like solar panels. In response to concerns about the project's reliance on a bonus FAR being approved, Mr. Greetham requested that the Hearing Examiner not deny the project pending approval of the bonus FAR because, even if the City Council would not pass a resolution approving the bonus FAR, the Applicant could pursue the bonus FAR through other means.

Declaration of Mike Michael; Declaration of Heather Wright; Declaration of David Greetham.

- 65. The Applicant filed a post-hearing brief in which it argued that the proposed hotel and associated facilities would be consistent with development in the Mixed Use Town Center – Central Core zone, that the Hearing Examiner has independent authority to deviate from the Planning Commission's recommendation to deny the application, that substantial evidence supports the conclusion that all CUP criteria for approval have been met, and that no meaningful evidence has been presented to demonstrate that the proposed development failed to meet all site plan/design requirements for approval. *Applicant's Post-Hearing Brief, dated January 31, 2020.*

66. The City also filed a post-hearing brief, arguing that the Hearing Examiner is not bound to follow the Planning Commission’s recommendation to deny the SPR and CUP applications; a material detriment from traffic, noise, and parking cannot be shown under the CUP criteria because an MDNS was issued with a determination that no significant adverse impacts from traffic, noise, and parking existed; the TIA prepared for the project provided a thorough analysis, as required under BIMC 15.40.025; the traffic, noise, and parking impacts of the proposed development would not have a materially detrimental effect on uses and property in the vicinity; the spa, retail shop, and banquet facilities proposed for the hotel are permitted uses in the Core District, and only the hotel requires a CUP; the project is consistent with City design guidelines, building height requirements, and Comprehensive Plan; and the Hearing Examiner should not deny the project pending approval of the bonus FAR. *City Post-Hearing Brief, dated January 31, 2020.*
67. On February 3, 2020, the Hearing Examiner entered a post-hearing order admitting a legal brief prepared by Attorney Bricklin, on behalf of the Winslow Neighbors, dated January 23, 2020. The February 3, 2020, post-hearing order permitted the attorneys for the Applicant and the City to file a response to Mr. Bricklin’s brief by February 14, 2020. *Order in Response to Post-Haring Motion, dated February 3, 2020.*
68. In his brief, Mr. Bricklin argued that the Hearing Examiner is required to adopt the Planning Commission’s recommendation to deny the application because none of the four conditions specified in BIMC 2.16.110.E.5.b is present; the DRB failed to consider applicable design guidelines related to maximum façade length, roof design, articulation, and upper-level setbacks; the proposed development would not meet FAR and building height requirements; and the Applicant failed to provide a thorough evaluation of the project’s traffic impacts. Additionally, Mr. Bricklin argued that the application does not meet CUP decision criteria because the proposed development would not be not harmonious with the character and quality of development in the vicinity; would not qualify for a FAR bonus; would be materially detrimental to uses or property in the vicinity of the subject property due to noise, parking, scale, and traffic impacts; would not be consistent with Comprehensive Plan policies related to economic development; and would not take all necessary measures to eliminate or reduce its impacts on the immediate vicinity of the subject property. *Legal Memorandum of David Bricklin on Behalf of Winslow Neighbors, dated January 23, 2020.*
69. In answer to Mr. Bricklin’s Winslow Neighbors’ brief, the Applicant filed a response asserting that a conditional use could not be denied based on alleged impacts to neighboring properties when such impacts would be no greater than that of uses permitted outright under City code, citing *Hansen v. Chelan County*, 81 Wn. App. 133, 139, 913 P.2d 409 (1996). And the Applicant contends that there is no evidence that the project’s traffic, parking, or noise impacts would be any greater than those of other uses

permitted outright in the zone under BIMC Table 18.09.020, such as multifamily dwellings, commercial/residential mixed-use developments, educational facilities, government or religious facilities, or health care facilities. *Applicant Response Brief, dated February 14, 2020.*

70. The City filed a response to the Winslow Neighbors' brief, which asserted that strict compliance with the City Comprehensive Plan is not required when evaluating a development proposal and, instead, that only general consistency with the plan is required for approval. The City contends that the City Planning Director exceeded the general consistency requirement for development approval by analyzing the project's consistency with over 150 guiding principles, goals, and policies of the City Comprehensive Plan and did not find that the proposal would be inconsistent with any of those principles, goals, or policies. *City Response Brief, dated February 14, 2020.*

Staff Recommendation

71. City staff determined that, with 83 conditions, the proposal would be consistent with the Bainbridge Island Comprehensive Plan and Winslow Master Plan, would meet the criteria for a major conditional use permit under BIMC 2.16.110, and would meet the criteria for a major site plan/design review under BIMC 2.16.040. City staff recommends that the CUP and SPR applications be approved, with conditions. *Exhibit 1, Staff Report, pages 10 through 18, and 30 through 37.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and approve, approve with conditions, or deny applications for conditional use permits under BMIC 2.14.030 and BMIC 2.16.110.D. City Hearing Examiner Rule of Procedure 1.9.2 provides that the Hearing Examiner may remand an application.¹⁵

If requested by the Applicant, a site plan/design review application that is part of a proposal requiring multiple land use permits may be combined in a consolidated project review. Related applications requiring a public hearing must be considered at one public hearing in accordance with BIMC 2.16.170. The applications have been consolidated for review before the Hearing Examiner. *BIMC 2.16.170. Exhibit 1, Staff Report, page 2.* Decisions are needed for the applications for site plan/design review and the CUP. The City Council has established criteria

¹⁵ Although authority to remand an application is provided in the rules, because the authority to remand is not expressly provided for in ordinance, it is not entirely certain if the Hearing Examiner has that authority. The preference of the Hearing Examiner would be for the City to clarify that authority by amending its ordinances to allow for a remand, or at a minimum, issue a code interpretation to that effect. Without clear authority to remand for specific actions, the Hearing Examiner is limited to the outcomes of approval or denial.

for review of each of these applications, which the Hearing Examiner must follow when deciding whether to approve a specific application.

In the case of a major conditional use permit application, the planning commission reviews the application prior to the review and final decision. The planning commission recommends approval, approval with conditions, or denial of an application. The planning commission is directed by ordinance to recommend denial of the application if it determines that the applicable decision criteria are not met. *BIMC 2.16.110.E.3.*

The planning commission's recommendation is given substantial weight in the consideration of the application by the Director when preparing a staff recommendation to the Hearing Examiner. The Director must review the application materials, staff report, and recommendations of the planning commission and prepare a report to the Hearing Examiner recommending approval, approval with conditions, or disapproval of the application. *BIMC 2.16.110.E.4.*

The Hearing Examiner is directed by ordinance to consider the application materials and the Director's recommendation at a public hearing. The Hearing Examiner must "make compliance with the recommendations of the planning commission a condition of approval," unless the Hearing Examiner concludes that the recommendations:

- i. Reflect inconsistent application of design guidelines or any applicable provisions of this code;
- ii. Exceed the authority of the design review board or planning commission;
- iii. Conflict with SEPA conditions or other regulatory requirements applicable to the project
- iv. Conflict with requirements of local, state, or federal law.

BIMC 2.16.110.E.5.a-b.

This provision does not require the Hearing Examiner to adopt the recommendations of the Planning Commission unless certain conditions are present but requires only that the Hearing Examiner make compliance with the recommendations "a condition of approval" unless certain conditions are present. The Hearing Examiner cannot make denial of an application "a condition of approval," and therefore BIMC 2.16.110.E.5.1.a-b does not apply in these circumstances. In other words, the Hearing Examiner has no obligation to follow a recommendation of denial made by the Planning Commission. He may choose to do so, but is not required by law to do so.

Criteria for Review

Conditional Use Permit

A major conditional use permit is a mechanism by which the city may require specific conditions on development or the use of land to ensure that designated uses or activities are compatible with other uses in the same zone and in the vicinity of the subject property. If imposition of conditions will not make a specific proposal compatible the proposal shall be denied.

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BIMC 2.16.110.A.

A conditional use may be approved or approved with conditions if:

- a. The conditional use is harmonious and compatible in design, character and appearance with the intended character and quality of development in the vicinity of the subject property and with the physical characteristics of the subject property; provided, that in the case of a housing design demonstration project any differences in design, character or appearance that are in furtherance of the purpose and decision criteria of BIMC 2.16.020.Q shall not result in denial of a conditional use permit for the project; and
- b. The conditional use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities and storm drainage facilities; and
- c. The conditional use will not be materially detrimental to uses or property in the vicinity of the subject property; and
- d. The conditional use is in accord with the comprehensive plan and other applicable adopted community plans, including the Island-Wide Transportation Plan; and
- e. The conditional use complies with all other provisions of the BIMC, unless a provision has been modified as a housing design demonstration project pursuant to BIMC 2.16.020.Q; and
- f. All necessary measures have been taken to eliminate or reduce to the greatest extent possible the impacts that the proposed use may have on the immediate vicinity of the subject property; and
- g. Noise levels shall be in compliance with BIMC 16.16.020 and 16.16.040.A; and
- h. The vehicular, pedestrian, and bicycle circulation meets all applicable city standards, unless the city engineer has modified the requirements of BIMC 18.15.020.B.4 and B.5, allows alternate driveway and parking area surfaces, and confirmed that those surfaces meet city requirements for handling surface water and pollutants in accordance with Chapters 15.20 and 15.21 BIMC; and

- i. The city engineer has determined that the conditional use meets the following decision criteria:
 - i. The conditional use conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
 - ii. The conditional use will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
 - iii. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and
 - iv. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and
 - v. If the conditional use will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the conditional use, and the applicable service(s) can be made available at the site; and
 - vi. The conditional use conforms to the “City of Bainbridge Island Engineering Design and Development Standards Manual,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 17.
- j. If a major conditional use is processed as a housing design demonstration project pursuant to BIMC 2.16.020.Q, the above criteria will be considered in conjunction with the purpose, goals, policies, and decision criteria of BIMC 2.16.020.Q.

BIMC 2.16.110.F.1.

Site Plan and Design Review

The stated purpose of the City’s site plan and design review code provisions is: to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the city. The overall goal of this chapter is to minimize land alteration, provide greater site development flexibility and consequently provide more creative and imaginative design than generally is possible under conventional zoning regulations. It is further intended to provide for the review of development proposals with respect to overall site design and to provide a means for guiding development in a logical,

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safe, attractive, and expedient manner, while also allowing property to be developed in phases. An additional purpose is to promote those specific purposes for each zoning district stated in Chapter 18.06 BIMC.

BIMC 2.16.040.A.

The following criteria apply to recommendations or decisions on site plan and design review applications:

1. The site plan and design is in conformance with applicable code provisions and development standards of the applicable zoning district, unless a standard has been modified as a housing design demonstration project pursuant to BIMC 2.16.020.S;
2. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems are adequate, safe, efficient and in conformance with the Island-Wide Transportation Plan;
3. The Kitsap County health district has determined that the site plan and design meets the following decision criteria:
 - a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system.
 - b. If the health district recommends approval of the application with respect to those items in subsection E.3.a of this section, the health district shall so advise the director.
 - c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director;
4. The city engineer has determined that the site plan and design meets the following decision criteria:
 - a. The site plan and design conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
 - b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
 - c. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and
 - d. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and
 - e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the site, and the applicable service(s) can be made available at the site; and

- f. The site plan and design conforms to the “City of Bainbridge Island Design and Construction Standards,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 18;
5. The site plan and design is consistent with all applicable design guidelines in BIMC Title 18, unless strict adherence to a guideline has been modified as a housing design demonstration project pursuant to BIMC 2.16.020.S;
6. No harmful or unhealthful conditions are likely to result from the proposed site plan;
7. The site plan and design is in conformance with the comprehensive plan and other applicable adopted community plans;
8. Any property subject to site plan and design review that contains a critical area or buffer, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter;
9. Any property subject to site plan and design review that is within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter;
10. If the applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC 17.20.020.C, the requirements of BIMC 17.20.020.D have been met;
11. The site plan and design has been prepared consistent with the purpose of the site design review process and open space goals.

BIMC 2.16.040.F.

The director may approve, approve with conditions, or disapprove the application for site plan and design review. Conditions may be imposed to enable the proposal to meet the standards of the decision criteria.

BIMC 2.16.040.G.

The criteria for review adopted by the 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 Based on Findings

Site Plan and Design Review

1. **With the recommended conditions, the proposed development complies with the criteria for site plan/design review approval.** The site plan and design is in conformance with applicable code provisions and development standards of the MUTC-

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CC zone. Although open space and perimeter landscaping is not required for the proposed use, the building would be designed around a courtyard, which would be open to the public.

The project would be in conformance with the Island-Wide Transportation Plan. Water and sewage services would be provided by the City. Additional water service would be provided through a rainwater recycling system. The City engineer determined that the site plan meets all decision criteria and issued a Certificate of Concurrency. The project would conform to the City's Design and Construction standards. The DRB reviewed the proposal over a period of six meetings and recommended approval, finding that, as conditioned, the site plan and design would be consistent with all applicable design guidelines in Title 18 BIMC.

Although aspects of the building design would not strictly conform to applicable design guidelines, strict conformity is not required. The Applicant addressed each relevant guideline and demonstrated how the proposed site plan and design would be consistent with the guidelines when applied with some flexibility. As a condition for approval, the Applicant is required to provide an additional drawing showing the perpendicular two-foot planters along the parallel parking on the east side, a description of the material pallet, and plans for the hydraulic design of the roof drainage/gutter system prior to issuance of the building permit for the structure. As an additional condition, the Applicant is required to submit any substantial changes to building materials and roof articulation for review by the DRB. No harmful or unhealthful conditions are likely to result from the proposed development. Although some public testimony and comments raised concerns about compliance with all building design criteria, the DRB and City staff determined that there would be substantial compliance with the guidelines so that, when applied in a flexible manner, the building design should be approved, with conditions, as consistent with the applicable guidelines. *Findings 1-19, 24-27, 29-38, 40-71.*

- 2. With the recommended and additional conditions, the proposed development would meet the major CUP criteria of BIMC 2.16.110.F.1.** The City reviewed the proposed development, the Applicant's Environmental Checklist, and other information on file. No critical areas were identified. The City issued an MDNS, with 20 conditions. The MDNS was not appealed. The proposed 87-room hotel and associated facilities would be located in the Central Core district, which is the most densely developed district in the Mixed Use Town Center. As discussed in Conclusion 1 above, the proposed development would meet all design guidelines for development in the Central Core district. The proposed development, as conditioned, would also meet all dimensional standards for building height, lot coverage, setbacks, and floor area ratio and would exceed the tree retention and landscaping requirements. The proposed use would be adequately served by public facilities, including roads, water, fire, sewer, and storm

drainage. The Applicant would be required to submit a stormwater pollution prevention plan prior to construction. The City determined that the Applicant provided a thorough traffic impact analysis, and the City Engineer issued a Certificate of Concurrency after determining that the traffic impacts of the proposed development would maintain existing level of service standards. The City Engineer also determined that the proposed development would conform to drainage regulations, that it would not create an undue burden on water quality, that pedestrian ways would align with streets serving the development, that the streets and pedestrian ways would be adequate to accommodate anticipated traffic, that there would be adequate water and sewer system capacity to serve the proposed development, and that the proposed development would conform to the City of Bainbridge Island Engineering Design and Development Standards Manual. As conditioned, the proposed development would comply with the City Comprehensive Plan, Winslow Master Plan, Island-Wide Transportation Plan, and all other applicable provisions of City Code.

Additional conditions are necessary to ensure that noise impacts of the proposed development would comply with the noise regulations of BIMC 16.16.020 and .040.A and would not be materially detrimental to uses or property in the vicinity of the subject property. The record here does not show that City staff reviewed any noise impact studies to determine whether such impacts would be materially detrimental to property in the vicinity of the site or would comply with applicable noise regulations. The Applicant's acoustical consultant performed a limited analysis that did not employ any data reflecting sound levels of music from outdoor venues and, based on assumptions about the sound levels of unamplified music at outdoor venues, concluded that such unamplified music would exceed noise regulations without the use of barrier attenuation. Additionally, the Applicant's acoustical consultant concluded that the noise impacts would likely be near or exceed daytime noise regulation limits and would likely exceed nighttime noise regulation limits even with the use of barrier attenuation. Accordingly, to ensure compliance with CUP criteria, the Applicant should prepare and submit to the City a noise impact analysis and noise impact mitigation plan prior to issuance of building permits. The noise impact analysis should include predicted noise impacts to property in the vicinity of the site from outdoor events, hotel and event guests, delivery services, garbage collection, and exterior mechanical equipment. The noise impact mitigation plan must detail measures to reduce noise impacts and must demonstrate that such measures would, at a minimum, be adequate to comply with applicable noise regulations under BIMC 16.16.020. Upon submittal and review of the Applicant's noise impact analysis and mitigation plan, and prior to issuance of building permits, the Applicant must work with the City to implement mitigation measures designed to bring the proposed development into compliance with applicable noise regulations. Such measures may include, but are not limited to, muffling of HVAC systems, adding additional sound protective garage doors or other noise protective or operational measures, specifying suitable musical instruments and amplification systems to be used at outdoor events,

limiting hours for outdoor events, installing a sound monitoring system to provide notification that an event is exceeding noise code limits, and/or specifying the height of fence to capture noise emissions. *Findings 1-71.*

DECISION

Based on the preceding findings and conclusions, the request for approval of major conditional use permit and major site plan/design to redevelop two parcels within the Mixed Use Town Center-Central Core Overlay District to construct an 87-room hotel on a 1.85-acre site at 253 and 241 Winslow Way West is **APPROVED**, with the following conditions:¹⁶

SEPA Conditions:

1. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop, and the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
2. The existing building at the south end of TA# 272502-4-098-2009 shall be photographed prior to demolition. Any architecturally significant craftsmanship shall be documented, and materials salvaged where feasible. Photographs and any other historic documentation of the site shall be made available for viewing in a gallery space within the development. This shall be viewable upon certificate of occupancy for the building.
3. To mitigate traffic impacts on adjacent properties and with permission of the property owner, the Applicant shall develop the frontage of the adjacent property to the east (TA#: 272502-4-099-2008) consistent with the street standard for an urban collector roadway in the Winslow Core per drawing DWG. 7-030. The frontage shall include a 5-foot-wide right of way dedication along the full property's Winslow Way West frontage conveyed to the City by a Right of Way Deed (or through a permanent pedestrian easement), a 6-foot-wide bike lane (5 feet of asphalt and 1-foot gutter pan), concrete curb and gutter with an adjacent 3-foot planter strip, and a minimum 5-foot-wide concrete sidewalk. A public pedestrian easement shall be dedicated to the City for sidewalk improvements proposed outside of the future right of way boundaries. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.

¹⁶ Conditions include both ordinance requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

4. To mitigate traffic impacts, the Applicant shall install a crosswalk on Winslow Way W at a point approximately midway between the crosswalk at Wood Avenue SW and the crosswalk at Finch Place SW. Additional site evaluation may be required to determine the specific design and location. A right of way permit is required for this work and will be reviewed by the Public Works Department at the time of application. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.
5. To mitigate traffic and infrastructure impacts, the Applicant shall repave the right of way along the Winslow Way W frontage of the subject properties and adjacent property to the east (TA#: 272502-4-099-2008). Repaving shall extend from the frontage of the above described properties to the centerline of Winslow Way W. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.
6. To mitigate traffic and parking impacts, the Applicant shall operate a minimum of one ADA compliant shuttle to transport guests to and from the Washington State Ferry terminal and other local destinations. This service shall be operational upon certificate of occupancy for the building.
7. To mitigate traffic and parking impacts, the Applicant shall provide a shared bicycle (or equivalent electric-assisted bicycle) program on-site with a minimum of 36 bicycles and 36 bicycle parking spaces (one per five of the 180 parking spaces) that allow secure locking of both the frame and wheels of a bicycle. This service shall be operational upon certificate of occupancy for the building.
8. To mitigate traffic and parking impacts, the Applicant shall incorporate communications to their guests regarding the alternative modes of transportation available to reduce the use of single occupancy vehicles. Communication with guests shall address at a minimum: the ADA-compliant shuttle service to and from the Washington State Ferry terminal and other local destinations, the shared bicycle program and location of bike lanes, and walkability with suggested routes. The Applicant shall inform the City of their plan and periodically update them of any changes.
9. To mitigate traffic impacts, the hotel shall have staggered check-in times that coincide with the Washington State Ferry schedule.
10. To mitigate traffic and parking impacts, the Applicant shall place parking signs near each vehicle entrance to denote the purpose. Examples may include employee parking, service and delivery vehicle entrance, shuttle entrance, valet

parking, parking garage, and restaurant parking. The signs shall be installed prior to certificate of occupancy for the building.

11. To ensure traffic, parking, and noise impacts are successfully mitigated, the Applicant shall submit to the City a monitoring report, prepared by the respective qualified professionals, after the first and second year following the certificate of occupancy for the building. During the first two years following the certificate of occupancy for the building, the Applicant shall also track complaints, the nature of the complaint, the time/date the impact was noted and provide this to the professionals preparing the reports. The monitoring report shall evaluate traffic, parking, and noise for a minimum of six events occupying the large banquet room and the courtyard. The reports shall include, at a minimum, information about the level of occupancy of the hotel rooms during the events, the method of travel for hotel guests, the number of parking spaces (including stacked vehicles) occupied, the number of people attending the event, and measured noise levels. The Applicant shall work with the City's Public Works Department Development Engineer to determine other traffic and parking variables to measure for the monitoring report.
12. To ensure traffic, parking, and noise impacts are successfully mitigated, the City shall use the monitoring reports to determine if additional conditions are necessary. Additional conditions may be administratively imposed and may include but not be limited to:
 - Limitations on room occupancy, the frequency, size, and hours of events;
 - Testing by an acoustical engineer to establish appropriate noise reduction measures;
 - Offsite parking agreements;
 - Additional screening;
 - Infrastructure improvements; and/or
 - An event and courtyard management plan.
13. Dust shall be managed in compliance with WAC 173-400 and Puget Sound Clean Air Agency – Regulation I, 9.15 (PSCCA Reg). “It shall be unlawful for any person to cause or allow visible emission of fugitive dust...” – PSCCA Reg, 9.15(a). The project proponent or contractor shall prepare and implement a “Dust Control Plan” in conformance with Department of Ecology Publication 96-433. Prior to any site activity, the “Dust Control Plan” shall be submitted to the City and it shall be actively managed for the duration of the project. Unlawful emissions (see below) shall be corrected immediately and/or dust generating operations ceased until additional or alternate BMPs can be implemented to maintain emissions below allowable levels.

“Fugitive dust” means a particulate (especially soil/dirt) emission made airborne by forces of nature, man’s activity, or both, that leaves the subject site. Unlawful emissions shall generally be defined as emissions leaving the subject property that are visible to an untrained observer. Where continuous monitoring equipment is used particulate matter concentrations shall be monitored for 10µm particle (PM10) size. The 24-hr average PM10 emissions shall not exceed a concentration equivalent to the EPA Air Quality Index (AQI) of 50 (54µg/m³) and any instantaneous PM10 emissions shall not exceed a concentration equivalent to an AQI of 100 (154µg/m³).

14. To mitigate noise impacts, the Applicant shall inform immediately abutting neighbors of events taking place on-site to the extent feasible. For example, the Applicant may install a kiosk near the building entrance where dates and times of events can be posted for public viewing, information on a webpage, and/or an email listserv with information on who to contact with questions or concerns. The Applicant shall inform the City of their method and periodically update them of any changes.
15. To mitigate noise impacts, solid waste pick-up shall occur between 10:00am and 12:00pm in accordance with the letter from Bainbridge Disposal dated December 5, 2018.
16. To mitigate noise impacts, solid waste facilities shall be enclosed within the building and pick-up shall occur under the building. Delivery services shall occur at the loading docks in the west wing of the building.
17. To mitigate noise and light impacts to the adjacent Wood Avenue Townhomes to the west, a solid six-foot-high wall or fence shall be installed along the west property line abutting the townhome access drive.
18. The limits of clearing and grading shall be clearly marked in the field and inspected by the Department of Planning and Community Development staff prior to start of any clearing, grading, or other site work.
19. The City’s Arborist shall be present during the preconstruction meeting to advise on best practices for excavation around the root zones of trees to be preserved both on- and off-site.
20. To mitigate visual, noise, and light impacts to adjoining properties, additional vegetation shall be planted along the southerly lot boundary of TA# 272502-4-097-2000, beginning at the NW corner of the surface parking lot and extending westerly to the SW corner, then continuing northerly along the west lot line to the

edge of paved parking. Additional vegetation shall also be planted from the SE corner of TA# 272502-4-098-2009, extending northerly the full length of the abutting residential lot TA# 272502-4-102-2003. A planting plan shall be submitted with the building permit, reviewed by the City and installed or bonded for prior to certificate of occupancy.

Project Conditions:

General

21. Except for modifications reflecting compliance with these conditions of approval, the project shall be in substantial conformance with the site plan and landscape plan dated June 4, 2019.
22. Prior to construction activity, the Applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, right-of-way, and building permits.
23. All work shall adhere to the City's seasonal work limitations between October 1 and April 30 of any year. During this period, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed and unworked for more than seven days.
24. Prior to any construction, a temporary erosion and sedimentation control plan (TESCP) shall be submitted and approved by the City. Construction shall be restricted to the dates occurring between May 1 and September 30 unless a wet weather erosion control plan is submitted and approved by the City prior to construction.
25. No use shall exceed the maximum environmental noise level, established by Chapter 173-60 WAC, as adopted in Chapter 16.16 BIMC. All construction activities shall comply with noise limitations per BIMC 16.16.020.
26. No use in this district shall produce emissions of smoke, dust, and/or odors beyond the property boundary that may unreasonably interfere with any other property owners' use and enjoyment of his/her property. In addition, all sources and emission units are required to meet the emission and the ambient air quality standards specified in Chapter 173-400 WAC, and administered by the Puget Sound Clean Air Agency (formerly the Puget Sound Air Pollution Control Authority), and shall apply to all air contaminants listed in that regulation.
27. Lighting standards set forth in BIMC 18.15.040 apply. A post-installation inspection of the lighting is required prior to certificate of occupancy for the building permit. All outdoor lighting fixtures installed on private and public

property shall comply with this chapter. This chapter does not apply to interior lighting; provided that if, upon inspection, it is determined by the director that any interior lighting emitting light outside of the building or structure in which it is located creates a light trespass, the interior lighting shall be subject to the requirements of BIMC 18.15.040.

28. The Applicant has proposed 180 parking spaces on-site, 143 of which are striped and 37 spaces using stacked parking by valet attendants. The maximum event scenario in the Parking Analysis by Walker Consultants recommends 196 spaces. In order to accommodate the balance of 16 parking spaces, the site is limited to simultaneous occupancy of up to 6,200 sq.ft. of the 7,964 sq.ft. of event space at one time unless a parking agreement to accommodate an additional 16 spaces has been identified, or unless modified per SEPA conditions 11 and 12. For example, the pre-function space shall not be used for events separate and unrelated to the large event space if the large banquet room, small banquet room, and meeting rooms are occupied.
29. To mitigate the impact of additional employees and their potential need for affordable workforce housing, the Applicant shall provide a minimum of six (6) affordable residential units on-site within the proposed hotel, if found to still meet level of service and traffic concurrency. Each unit proposed shall have one designated parking stall. The affordable units shall serve a residential use and shall not be used as short term rentals or additional hotel rooms. In the event that the units cannot be contained within the existing hotel, or require additional parking that cannot be provided on-site, the proposal may require an adjustment to the Site Plan Review.
30. The Applicant shall implement, where feasible, green building practices. The Applicant shall provide information to the City with the associated building permit application detailing which green building standards were pursued, which were rejected as infeasible and which were incorporated into the building design. Without limiting the foregoing, the Applicant shall continue to pursue the Living Building Challenge, and provide a report on those efforts together with the associated building permit applications.
31. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop and contact the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.

32. Prior to building permit issuance, the Design Review Board (DRB) shall review a drawing showing the perpendicular two-foot planters along the parallel parking on the east side, description of the Winslow Hotel – PLN50880 SPR/CUP Page 42 of 46 material pallet, plans for the hydraulic design of the roof drainage/gutter system, and any other substantial changes to building materials and roof articulation.
33. The sidewalk shall remain level across driveways. Where the building abuts the sidewalk, there shall be an 18-inch-wide minimum shy zone.
34. Prior to building permit issuance, the tax parcels (272502-4-097-2000 and 272502-4-098-2009) shall be aggregated or the boundary line adjusted so that all provisions in Title 18 BIMC are met.
35. Prior to building permit issuance, a business license shall be acquired from the City for any proposed or changes in occupancy.
36. Pursuant to BIMC 2.16.110.I, once a conditional use permit is approved, no building, use, or development shall occur contrary to that specified in the Conditional Use Permit. The owner shall record a declaration with the Kitsap County auditor showing the land to be bound by a conditional use permit. No building permit shall be issued for structures other than those specified in the conditional use approval. The declaration shall reference the official files of the City through which the permit was granted. The declaration shall be a covenant running with the land. No building permit shall be issued unless such declaration is recorded.

Building Official

37. The project shall comply with the City of Bainbridge Island (COBI) construction codes as adopted by Chapter 15.04 of the Bainbridge Island Municipal Code (BIMC). The Applicant is encouraged to consult with the Building Official, as necessary, to ensure compliance with applicable codes and standards.
38. The project shall comply with the requirements of the Department of Labor and Industries (L&I) for Electrical permits. COBI does not issue electrical permits but does monitor and coordinate electrical approvals with L&I.
39. The project shall comply with the provisions of the International Building Code (IBC) for fire separation, fire protection, access and the application of fire suppression systems as required by State Building Codes and the Bainbridge Island Fire District. The Applicant is encouraged to consult with the Fire District, as necessary, to ensure compliance with applicable standards.

40. A geotechnical report shall be provided for the project which coordinates geotechnical engineering and structural design requirements. The report shall address the design requirements and recommendations of the International Building Code (IBC) for foundation structural design criteria.
41. The project shall comply with the provisions of the International Building Code (IBC), Chapter 11 and ANSI 117.1 2009 for the application of accessibility and accessible features, including but not limited to parking, accessible routes, path of travel, entry and egress components and exterior and interior features for accessible rooms and restrooms.
42. Disabled access parking shall comply with the International Building Code (IBC) edition currently adopted by the City of Bainbridge Island.
43. The project shall comply with the provisions of the International Building Code (IBC) as amended by the State of Washington under Chapter 427 of the IBC for electric vehicle charging and infrastructure. The Applicant shall follow this statute, as applicable, and include necessary information with the building permit submittal.
44. The project shall comply with the provisions of the International Building Code (IBC) for required number of restroom and other fixtures including in public areas, restaurants, assembly areas.
45. A demolition permit is required for any demolition work occurring. If demolition is proposed for any structure which is older than 50 years, the project is required to be reviewed by the Bainbridge Island Historic Preservation Commission (HPC) prior to the issuance of a demolition permit and prior to any demolition work occurring. Prior to demolition permit issuance, an application is required to be submitted to the Puget Sound Air Quality District. All demolition shall be documented with a minimum 8.5 x 11 drawing showing the location of structures to be demolished, existing utilities, and any other infrastructure. All utilities shall be identified and properly abandoned or protected during demolition.
46. Should the project include a restaurant as discussed within the project narrative; the facility would be identified as a "Food Facility" and is required to comply with the Kitsap County Health Department regulations for such facilities.
47. The City of Bainbridge Island (COBI) enforces provisions of the State Plumbing Code specific to the collection of fats, oils and grease and the application of specific equipment, interceptors or other apparatus associated to or that may be

required for food or other facilities. The Applicant is responsible for strict adherence to the specific provisions for installation and maintenance of these systems and shall coordinate with COBI for compliance with the Plumbing Code and applicable COBI Engineering Standards.

Fire District

48. To the satisfaction of the Bainbridge Island Fire Department, the project shall comply with all applicable provisions of the adopted Fire Code.
49. Fire sprinklers and alarms are required for the project.
50. Fire flow of 1500 gpm is required.
51. Buildings over 30 feet high require aerial apparatus access of not less than 16 feet drivable width.

Health District

52. Prior to building permit issuance, the Kitsap Public Health District shall review and approve the rainwater recycling system and any permits required for a permanent food establishment.
53. If the Applicant proposes a large on-site sewage system, the permit may require an amendment or adjustment.

Public Works

54. Civil improvement plans, reports, and computations, prepared by a civil engineer registered in the State of Washington shall be submitted with the application(s) for a construction permit [building, grading, right-of-way (ROW), etc.] to the City for review and approval to construct all necessary infrastructure and utilities serving the site. Certificate of occupancy will not be issued for any building until all civil improvements are completed and finalized.
55. As-built civil construction plans stamped by a civil engineer shall be provided by the Applicant prior to final.
56. A Developer Extension Agreement (DEA) shall be executed at the site or utilities construction permitting application phase for the construction of roads and utilities to be inspected and accepted by the City.
57. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way in addition to completing the DEA

and obtaining other necessary construction permits. The ROW permit will be subject to separate conditions and bonding requirements.

58. The project frontage shall be developed consistent with the street standard for an urban collector roadway in the Winslow Core per drawing DWG. 7-030. The frontage shall include a five-foot-wide ROW dedication along the full parcels' Winslow Way West frontage conveyed to the City by a Right of Way Deed, a six-foot-wide bike lane (five feet of asphalt and one-foot gutter pan), concrete curb and gutter with an adjacent three-foot planter strip, and a minimum five-foot-wide concrete sidewalk.
59. A public pedestrian easement shall be dedicated to the City for sidewalk improvements proposed outside of the future ROW boundaries prior to building final.
60. Building overhangs that extend into the ROW shall require an air space license agreement with the City prior to building final.
61. On-site water and sewer main extensions shall include a utility easement granted to the City to the meters and/or backflow prevention devices, fire hydrants and building sewer cleanouts.
62. An 8-inch City sewer main has been extended to the southeast property corner. The main shall be extended approximately 300 feet north through and across the property along the eastern boundary to serve this and adjacent properties. The Applicant may apply for a latecomer reimbursement agreement for future hookups to the facilities.
63. Restaurant drainage fixtures shall be plumbed to an appropriately sized grease trap interceptor prior to discharging to the City's sewer system.
64. A Stormwater Pollution Prevention Plan (SWPPP) prepared by a civil engineer licensed in the State of Washington is required prior to construction activities including clearing or grading or civil improvements for all phases of the project that complies with Chapter 15.20 BIMC.
65. Pumping stormwater to a suitable conveyance system shall require failsafe redundancies to limit potential impacts to downstream properties, including a duplex pump system with backup power generation.
66. Discharging stormwater to the City's system shall be done so as to bypass existing water-quality structures in Winslow Way West. Additional structures or

storm drain lines shall be installed as necessary to avoid impact the existing structures.

67. Where the project discharges to the Winslow Way West storm drain system a downstream analysis shall be conducted to demonstrate that adequate capacity exists from the site to the main storm drain in Madison Avenue.
68. Disturbed project area totals approximately 1.8 acres. A sediment trap(s) per Department of Ecology BMP C240 shall be required where the total of on- and off-site contributing drainage area is less than three acres. Due to the constrained downstream storm drain system, a higher level of flow control protection is warranted. The sediment trap shall be designed with a storage capacity based on the 10-year peak flow of the developed site. Turbidity and pH control shall be required as necessary downstream of the sediment trap to achieve the performance standards of a State Stormwater General Construction Permit.
69. A final stormwater report shall be submitted with the building permit detailing compliance with all applicable minimum requirements as required by Chapter 15.20 BIMC, prepared by a civil engineer licensed in the State of Washington.
70. Prior to building permit final, the Applicant shall submit an operation and maintenance plan for the on-going maintenance of the on-site storm drainage systems.
71. All on-site stormwater facilities shall remain privately owned and maintained. The owner(s) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Annual inspection and maintenance reports shall be provided to the City. A Declaration of Covenant for stormwater system operation and maintenance will be required to be recorded before building final. The approved language for the Declaration of Covenant is found in Chapter 15.21 BIMC, Exhibit A.
72. The surface hotel parking lots and drive aisles shall be constructed of permeable pavements and hardscaping consistent with the preliminary civil site plans submitted with the application. These on-site stormwater management Best Management Practices (BMPs) shall be subjected to the aforementioned facilities maintenance responsibilities of the owner.
73. Prior to issuance of a building permit, the Applicant shall provide binding water and sewer availability letters from the City along with water meter sizing computations.

74. The proposed action(s), phased or concurrent, in their totality would result in more than one (1) acre of earth disturbance on the site and drain to waters of the State. A Construction Stormwater General Permit shall be obtained from the Washington State Department of Ecology and the site shall be monitored for discharge of pollutants and sediment to the wetlands and stream for the duration of the project. No land clearing or construction permits shall be issued prior to obtaining the State permit.
75. A traffic impact analysis was completed for the site per Chapters 15.32 and 15.40 BIMC to evaluate for concurrency. Based on the results of the traffic impact analysis completed by Heath & Associates dated April 24, 2019 and subsequent information submitted on July 3, 2019, a certificate of concurrency was issued per BIMC 15.32.060. Any proposed intensity of use at the site may require analysis and a new evaluation for concurrency.

Trees and Vegetation

76. As proposed, new trees are required to meet the tree unit requirement. Trees planted to meet tree retention requirements shall be planted in accordance with the planting requirements of BIMC 18.15.010.H and the planting plan dated December 27, 2018.
77. Temporary or permanent irrigation within new planting areas that do not have high soil moisture conditions is required in accordance with BIMC 18.15.010.I.
78. Prior to the certificate of occupancy, the required tree units and landscaping shall be planted or a performance assurance shall be accepted by the City.
79. Per BIMC 18.15.010.H.3, performance assurance is required to assure the City that the required tree units and landscaping are properly installed and will become established and be adequately maintained. Prior to the certificate of occupancy, the required tree units and landscaping shall be installed. A Washington landscape architect, Washington certified nursery professional, or Washington certified landscaper shall submit a landscaping declaration to the director to verify installation in accordance with the approved plans. The time limit for compliance may be extended to allow installation of landscaping during the next appropriate planting season as approved if the director determines that a performance assurance device, for a period of not more than one year, will adequately protect the interests of the City. The performance assurance device shall be for 150 percent of the cost of the work or improvements covered by the assurance device. In no case may the property owner delay performance for more than one year. Once the planting is completed, landscape declaration is submitted, and a

maintenance and monitoring assurance is accepted, the performance assurance shall be released.

80. Per BIMC 18.15.010.H.4, the property owner shall replace any unhealthy or dead plant materials in conformance with the approved landscape plan. Prior to the certificate of occupancy, a maintenance assurance device shall be submitted for a period of five years after acceptance by the City of the new planting of vegetation to ensure proper installation, establishment, and maintenance. The maintenance assurance device amount shall not be less than 20 percent of the cost of replacing materials covered by the assurance device. The maintenance surety shall be refunded to the Applicant upon completion of the five year monitoring period and submittal of final compliance documentation as outlined in the landscape plan, minus any funds needed for the City to perform corrective actions or perform monitoring.

Floor Area Ratio (FAR) Bonus

81. Prior to the City issuing a building permit for any structure which exceeds the 0.6 commercial Floor Area Ratio (FAR), the Applicant shall acquire the FAR bonus pursuant to BIMC 18.12.030.E.
82. To the extent feasible, the Applicant shall earn the 25,058 sq.ft. of commercial Floor Area Ratio (FAR) bonus (totaling \$851,972.00 at \$34.00/sq.ft.) in accordance with a city council resolution pursuant to BIMC 18.12.030.E.3, in the following ways:
 - Construct a pavilion as depicted in the Waterfront Park Master Plan as approved by the Comprehensive Plan.
 - Street and utility improvements on Winslow Way West between Grow Avenue and Madison Avenue, including but not limited to utility upgrades, vehicular travel way improvements, sidewalk and bike lane construction, signage, striping, right-of-way acquisition, and landscaping.
 - If the Applicant proposes the above recommendations or other public amenities, they shall first be secured through a city council resolution pursuant to BIMC 18.12.030.E.3.
83. If a heritage tree is chosen to satisfy the FAR bonus option, the Applicant shall work with the City's arborist to determine the FAR value of the heritage tree to be protected on-site. Any Heritage Trees proposed for the purposes of a Floor Area Ratio (FAR) bonus are required to be protected and retained in order to maintain the bonus FAR. If not retained, the FAR bonus earned from the tree shall be earned using other FAR bonus options in accordance with BIMC 18.12.030.E.

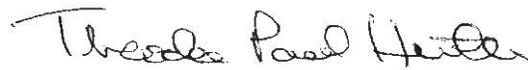
Additional Conditions Necessary to Satisfy CUP Criteria

84. Prior to issuance of building permits, the Applicant shall prepare and submit to

the City a noise impact analysis of the proposed development. The noise impact analysis shall include predicted noise impacts to property in the vicinity of the site from outdoor events, hotel and event guests, delivery services, garbage collection, and exterior mechanical equipment. The Applicant shall also prepare and submit to the City a noise impact mitigation plan detailing measures to reduce noise impacts of the proposed development and demonstrating that, at a minimum, such mitigation measures would sufficiently reduce noise impacts to comply with applicable noise regulations under BIMC 16.16.020.

85. Upon submittal and review of the Applicant's noise impact analysis and mitigation plan, and prior to issuance of building permits, the Applicant shall work with the City to implement mitigation measures designed to bring the proposed development into compliance with applicable noise regulations that are consistent with all other conditions of CUP approval. Such measures may include, but are not limited to, muffling of HVAC systems, adding additional sound protective garage doors or other noise protective or operational measures, specifying suitable musical instruments and amplification systems (if any) to be used at outdoor events, limiting hours for outdoor events, installing a sound monitoring system to provide notification that an event is exceeding noise code limits, and/or specifying the height of fence or wall to capture noise emissions.
86. The City shall maintain a complaint file from the day the hotel opens for at least one year following that opening. Citizen complaints, if any, shall be logged and detailed in that complaint file. In addition, as detailed in this decision and in conditions 11 and 12, noise and traffic shall be monitored by the Applicant and the City during the first two years of hotel operations. City staff shall compile all concerns associated with hotel operations during this period. Within 30 days following the first year of operations, the City shall determine whether further review of the CUP (including further review by the Hearing Examiner at a re-opened hearing) is appropriate to consider additional conditions to mitigate specific impacts to the surrounding neighborhood that were not anticipated prior to operation of the hotel. .

DECIDED this 28th day of February 2020.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

Attachment A

The following exhibits were admitted into the record:

1. Staff Report, dated January 15, 2020
2. Master Land Use Application, dated April 25, 2019
3. Certification of Public Notice, dated January 16, 2020
4. Certificates of posting
 - a. Certificate of Posting, dated February 12, 2019
 - b. Email from PCD to Jennifer Smith, dated February 13, 2019, with email string
 - c. Certificate of Posting, dated April 27, 2019
 - d. Certificate of Posting, dated October 30, 2019
 - e. Certificate of Posting, dated November 5, 2019
5. Site Survey/Demo Plans, Photos (Sheet A2), revised April 26, 2019
6. Figure Ground Drawing (Sheet A15), dated April 26, 2019
7. Site plan set, dated January 14, 2020
 - a. Sheet Index, Legal Description (Sheet A1)
 - b. Site Survey/Demo Plan, Photos (Sheet A2)
 - c. Landscape Plan (Sheet A3)
 - d. Parking Level P2 Plan (Sheet A4)
 - e. Parking Level P1 Plan (Sheet A5)
 - f. Main Floor Plan (Sheet A6)
 - g. Mezzanine Plan (Sheet A7)
 - h. Second Floor Plan (Sheet A8)
 - i. Third Floor Plan (Sheet A9)
 - j. Elevations (Sheet A10)
 - k. Elevations (Sheet A11)
 - l. Courtyard Elevations (Sheet A12)
 - m. East/West Section (Sheet A13)
 - n. Perspective (Sheet A14)
 - o. Figure Grand Drawing (Sheet A15)
 - p. Street Cross Section & West Property Photo (Sheet A16)
8. Tree plan, dated December 27, 2018
 - a. Tree & Vegetation Retention Plan (Sheet TP101)
 - b. Tree & Vegetation Retention Plan (Sheet TP102)
 - c. Landscape Site Plan (Sheet L101)
 - d. Planting Plan (Sheet LP101)
 - e. Tree Calculation & Protection Detail (Sheet L600)
 - f. Planting Schedule (Sheet L601)
9. Lighting Plan, undated
10. Revised parking plans, dated January 14, 2020

Findings, Conclusions, and Decision
City of Bainbridge Island Hearing Examiner
Winslow Hotel SPR/CUP
No. PLN 50880 SPR/CUP

- a. Parking Level P2 Plan (Sheet A4), Valet Stack
 - b. Parking Level P1 Plan (Sheet A5), Valet Stack
 - c. Main Floor Plan (Sheet A6), Arrival Stack
11. Memorandum from Daniel Garcia, Walker Consultants, to Bruce Anderson, parking analysis, dated March 24, 2018
 12. Traffic Impact Analysis, Heath & Associates, Inc., dated April 2019
 13. Revised parking calculations, undated
 14. Certificate of Concurrency, dated June 6, 2019
 15. Certificate of Concurrency, dated December 9, 2019, with Traffic Impact Analysis, Heath & Associates, Inc., dated April 2019
 16. Memorandum from Peter Corelis, P.E., to Olivia Sontag, dated June 5, 2019
 17. Water/Sewer Availability Request, dated August 14, 2019, revised September 2019
 18. Non-binding Commitment for Water and Sewer System Capacity letter, dated June 7, 2019
 19. Email from Michal Yantis, Stantec, to Bruce Anderson, dated April 20, 2019, with email string
 20. Design Review Board Design Guidelines Checklists, undated
 21. Design Review Board Findings and Recommendation, unsigned and undated; Design Review Board Findings and Recommendation, dated June 17, 2019
 22. Multi-modal Transportation Advisory Committee (MTAC) minutes, dated May 8, 2017
 23. Environmental (SEPA) Checklist, dated April 25, 2019
 24. Letter from Joe Dunstan, DRB, to COBI Committee, dated June 18, 2019
 25. Planning Commission Recorded Motion, dated July 25, 2019, with Findings of Facts and Conclusions, dated July 25, 2019
 26. Memorandum from Olivia Sontag to Planning Commission, Winslow Master Plan Analysis, dated June 11, 2019
 27. Letter of Transmittal for Health District Review, dated January 7, 2019
 28. Tree Health Evaluation: Giant Sequoia, Ribeiro Consultants, dated November 23, 2018
 29. Preliminary Arborist Report, Tree Solutions, Inc., dated December 27, 2018
 30. Notice of Mitigated Determination of Nonsignificance (MDNS), dated November 25, 2019
 31. Letter from Bainbridge Disposal, Inc., to Bruce Anderson, dated December 5, 2018
 32. Memorandum from Jeff Weckstein, Walker Consultants, to Bruce Anderson, Winslow Hotel Parking Analysis Update, dated September 13, 2019
 33. Public comments, dated February 8-22, 2019
 34. Public comments, dated April 26 to May 10, 2019
 35. Public comments, dated November 1-15, 2019
 36. Planning Commission meeting public comments, received June 13, 2019
 37. Additional public comments (received outside of comment periods, so not considered)
 38. Public comments, January 16-23, 2020, admitted at January 23, 2020, open record hearing
 39. City Planner PowerPoint presentation, admitted at January 23, 2020, open record hearing

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40. Legal memorandum from Applicant, admitted at January 23, 2020, open record hearing
41. Email from Mike Burns to Bruce Anderson, dated January 16, 2020, with email string
42. PowerPoint slide presentation, admitted for illustrative purposes at January 23, 2020, open record hearing
43. Winslow Neighbors brief and exhibits, admitted at January 23, 2020, open record hearing
 - A-1. Tilghman Group Transportation Comments, dated June 10, 2019
 - A-2. Tilghman Group Transportation Comments Updated, dated September 30, 2019
 - A-3. Tilghman Group New Traffic Counts Memorandum, dated July 11, 2019
 - A-4. Excerpt from Bainbridge Island Downtown Parking Strategy: Strategies Report 2018 as prepared by Framework, Rick Williams Consulting Parking Transportation
 - A-5. Statement from Squamish Clearwater Resort Shuttle Driver Underutilized Shuttle
 - A-6. The Greenbusch Group, Inc., Winslow Hotel CUP – Acoustical Review, dated June 12, 2019
 - A-7. Petition – Impact of Hotel Noise on 4 Senior Buildings
 - A-8. Letter from Dr. Carol Rappaport Regarding Harmful Effects of Frequent Noise and Sleep Disruption on Seniors, dated January 8, 2020
 - A-9. Excerpt from World Health Organization Task Force: Guidelines for Community Noise, dated April 1999
 - A-10. Jonathan Graff-Radford MD with the Mayo Clinic: Report on Sundowning: Late-day Confusion, dated April 23, 2019
 - A-11. Eric Miller, Professional Musician, Letter Regarding Noise Amplification of Weddings, dated January 14, 2020
 - A-12. City of Bainbridge Island Staff Report for Winslow Hotel File #PLN50880 SPR/CUP, dated June 7, 2019, Page 17 of 39, with Inaccurate Zoning Statement as Highlighted
 - A-13. Next Door Bainbridge Screen Shot Conversation between Bruce Anderson and Allan Bogutz re: Dumpster Pickups, dated January 5, 2020
 - A-14. Cutler/Anderson Drawing, dated July 3, 2019, Showing Marge Williams Center and Winslow Hotel
 - A-15. Photo with Forty Foot Balloons Showing Height of Winslow Hotel Compared to Existing Building
 - A-16. Cutler/Anderson Drawing of Winslow Hotel West Façade Showing Hotel vis a vis Wood Ave Townhomes
 - A-17. Photo of Solar Panels on Marge Williams Center
 - A-18. Jack Sjolseth Email with Greg Epstein BI BBQ Owner Regarding Traffic, dated December 24, 2019
 - A-19. Jim Cutler West Side Operations Drawing with Kitchen, Garbage, Loading Dock with Proximity to Neighbors
 - A-20. 1000 Foot Radius from Site
 - A-21. Kitsap Transit Map and Schedules

- A-22. Saturday Parking Lot Utilization
- A-23. Highlighted Design Guidelines indicating mandatory regulations, guidelines subject to modification, and optional guidelines
- A-24. Roger van Gelder presentation regarding Unmet Design Guidelines
- A-25. Response by Winslow Neighbors to the Planning Director's Report
- A-26. Highlighted transcript of the official audio of the June 3, 2019, meeting of the Design Review Board, the portion during which the Winslow Hotel is discussed
- 44. Memorandum from Ross Tilghman, Tilghman Group, Winslow Hotel transportation comments, dated January 23, 2020
- 45. Memoranda from Adam Jenkins, The Greenbusch Group, Inc., to David Bricklin, dated June 12, 2019, and January 22, 2020
- 46. Memorandum from John Adams, Adams Architecture, to David Bricklin, dated January 22, 2020, and annotated illustrations, admitted at January 23, 2020, open record hearing
- 47. Revised Legal Memorandum from David Bricklin, submitted after hearing, marked by City, but not admitted or considered because not provided to City or Applicant and not authorized as a post-hearing document during the hearing.

Post-Hearing Orders and Responses:

- Legal Memorandum of Attorney Bricklin on Behalf of Winslow Neighbors, dated January 23, 2020¹⁷
- Hearing Examiner's Post-Hearing Order, dated January 24, 2020
- Email request and Declaration from Attorney David Bricklin, dated January 31, 2020
- Hearing Examiner's Order in Response to Post-Hearing Motion, dated February 3, 2020 Applicant's Post-Hearing Brief, dated January 31, 2020, with attached Declarations of Greg Heath, Jeff Weckstein, Bruce Anderson, and Michael Burns.
- City Post-Hearing Brief, dated January 31, 2020, with attached Declarations of Mike Michael, Heather Wright, and David Greetham
- Applicant Response Brief, dated February 14, 2020
- City Response Brief, dated February 14, 2020

¹⁷ A revised memorandum from David Bricklin, dated January 24, 2020, was submitted to the City after the hearing, but not admitted into record because it was not identified by the Hearing Examiner as a document that was authorized to be submitted post-hearing.

Attachment B

Conditions to Mitigate the Impacts from Proposed Winslow Hotel Proposal *As Determined by the City in its Threshold Determination*¹⁸

1. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop, and the Department of Planning and Community Development and the Washington State Department of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
2. The existing building at the south end of TA# 272502-4-098-2009 shall be photographed prior to demolition. Any architecturally significant craftsmanship shall be documented, and materials salvaged where feasible. Photographs and any other historic documentation of the site shall be made available for viewing in a gallery space within the development. This shall be viewable upon certificate of occupancy for the building.
3. To mitigate traffic impacts on adjacent properties and with permission of the property owner, the Applicant shall develop the frontage of the adjacent property to the east (TA#: 272502-4-099-2008) consistent with the street standard for an urban collector roadway in the Winslow Core per drawing DWG. 7-030. The frontage shall include a 5-foot-wide right of way dedication along the full property's Winslow Way West frontage conveyed to the City by a Right of Way Deed (or through a permanent pedestrian easement), a 6-foot-wide bike lane (5 feet of asphalt and 1-foot gutter pan), concrete curb and gutter with an adjacent 3-foot planter strip, and a minimum 5-foot-wide concrete sidewalk. A public pedestrian easement shall be dedicated to the City for sidewalk improvements proposed outside of the future right of way boundaries. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.
4. To mitigate traffic impacts, the Applicant shall install a crosswalk on Winslow Way W at a point approximately midway between the crosswalk at Wood Avenue SW and the crosswalk at Finch Place SW. Additional site evaluation may be required to determine the specific design and location. A right of way permit is required for this work and will be reviewed by the Public Works Department at the time of application. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.
5. To mitigate traffic and infrastructure impacts, the Applicant shall repave the right of way along the Winslow Way W frontage of the subject properties and adjacent property to the

¹⁸ NOTE: These conditions apply to any approval of site plan/design review or CUP permit in addition to any other conditions that may be applied following review of those applications.

east (TA#:272502-4-099-2008). Repaving shall extend from the frontage of the above described properties to the centerline of Winslow Way W. All work shall be completed or bonded for prior to certificate of occupancy for the building, unless otherwise agreed to by the City.

6. To mitigate traffic and parking impacts, the Applicant shall operate a minimum of one ADA compliant shuttle to transport guests to and from the Washington State Ferry terminal and other local destinations. This service shall be operational upon certificate of occupancy for the building.
7. To mitigate traffic and parking impacts, the Applicant shall provide a shared bicycle (or equivalent electric-assisted bicycle) program on-site with a minimum of 36 bicycles and 36 bicycle parking spaces (one per five of the 180 parking spaces) that allow secure locking of both the frame and wheels of a bicycle. This service shall be operational upon certificate of occupancy for the building.
8. To mitigate traffic and parking impacts, the Applicant shall incorporate communications to their guests regarding the alternative modes of transportation available to reduce the use of single occupancy vehicles. Communication with guests shall address at a minimum: the ADA-compliant shuttle service to and from the Washington State Ferry terminal and other local destinations, the shared bicycle program and location of bike lanes, and walkability with suggested routes. The Applicant shall inform the City of their plan and periodically update them of any changes.
9. To mitigate traffic impacts, the hotel shall have staggered check-in times that coincide with the Washington State Ferry schedule. To mitigate traffic and parking impacts, the Applicant shall place parking signs near each vehicle entrance to denote the purpose. Examples may include employee parking, service and delivery vehicle entrance, shuttle entrance, valet parking, parking garage, and restaurant parking. The signs shall be installed prior to certificate of occupancy for the building.
10. To ensure traffic, parking, and noise impacts are successfully mitigated, the Applicant shall submit to the City a monitoring report, prepared by the respective qualified professionals, after the first and second year following the certificate of occupancy for the building. During the first two years following the certificate of occupancy for the building, the Applicant shall also track complaints, the nature of the complaint, the time/date the impact was noted and provide this to the professionals preparing the reports. The monitoring report shall evaluate traffic, parking, and noise for a minimum of six events occupying the large banquet room and the courtyard. The reports shall include, at a minimum, information about the level of occupancy of the hotel rooms during the events, the method of travel for hotel guests, the number of parking spaces (including stacked vehicles) occupied, the number of people attending the event, and measured noise

levels. The Applicant shall work with the City's Public Works Department Development Engineer to determine other traffic and parking variables to measure for the monitoring report.

11. To ensure traffic, parking, and noise impacts are successfully mitigated, the City shall use the monitoring reports to determine if additional conditions are necessary. Additional conditions may be administratively imposed and may include but not be limited to:
 - Limitations on room occupancy, the frequency, size, and hours of events;
 - Testing by an acoustical engineer to establish appropriate noise reduction measures;
 - Offsite parking agreements;
 - Additional screening;
 - Infrastructure improvements; and/or
 - An event and courtyard management plan.

12. Dust shall be managed in compliance with WAC 173-400 and Puget Sound Clean Air Agency – Regulation I, 9.15 (PSCCA Reg). “It shall be unlawful for any person to cause or allow visible emission of fugitive dust...” – PSCCA Reg, 9.15(a). The project proponent or contractor shall prepare and implement a “Dust Control Plan” in conformance with Department of Ecology Publication 96-433. Prior to any site activity, the “Dust Control Plan” shall be submitted to the City and it shall be actively managed for the duration of the project. Unlawful emissions (see below) shall be corrected immediately and/or dust generating operations ceased until additional or alternate BMPs can be implemented to maintain emissions below allowable levels.

“Fugitive dust” means a particulate (especially soil/dirt) emission made airborne by forces of nature, man’s activity, or both, that leaves the subject site. Unlawful emissions shall generally be defined as emissions leaving the subject property that are visible to an untrained observer. Where continuous monitoring equipment is used particulate matter concentrations shall be monitored for 10µm particle (PM10) size. The 24-hr average PM10 emissions shall not exceed a concentration equivalent to the EPA Air Quality Index (AQI) of 50 (54µg/m³) and any instantaneous PM10 emissions shall not exceed a concentration equivalent to an AQI of 100 (154µg/m³).

13. To mitigate noise impacts, the Applicant shall inform immediately abutting neighbors of events taking place on-site to the extent feasible. For example, the Applicant may install a kiosk near the building entrance where dates and times of events can be posted for public viewing, information on a webpage, and/or an email listserv with information on who to contact with questions or concerns. The Applicant shall inform the City of their method and periodically update them of any changes.

14. To mitigate noise impacts, solid waste pick-up shall occur between 10:00 AM and 12:00 PM in accordance with the letter from Bainbridge Disposal dated December 5, 2018.

15. To mitigate noise impacts, solid waste facilities shall be enclosed within the building and pick-up shall occur under the building. Delivery services shall occur at the loading docks in the west wing of the building.
16. To mitigate noise and light impacts to the adjacent Wood Avenue Townhomes to the west, a solid six-foot-high wall or fence shall be installed along the west property line abutting the townhome access drive.
17. The limits of clearing and grading shall be clearly marked in the field and inspected by the Department of Planning and Community Development staff prior to start of any clearing, grading, or other site work.
19. The City's Arborist shall be present during the preconstruction meeting to advise on best practices for excavation around the root zones of trees to be preserved both on and off-site.
20. To mitigate visual, noise, and light impacts to adjoining properties, additional vegetation shall be planted along the southerly lot boundary of TA# 272502-4-097-2000, beginning at the NW corner of the surface parking lot and extending westerly to the SW corner, then continuing northerly along the west lot line to the edge of paved parking. Additional vegetation shall also be planted from the SE corner of TA# 272502-4-098-2009, extending northerly the full length of the abutting residential lot TA# 272502-4-102-2003. A planting plan shall be submitted with the building permit, reviewed by the City and installed or bonded for prior to certificate of occupancy.

Attachment C

Comprehensive Plan Goals and Policies and Winslow Master Plan Goals and Policies relevant to the proposal, identified by City staff, include: (Guiding Principles) Principle 1, Policy 1.2, Policy 1.3, Principle 2, Policy 2.1, Policy 2.2, Principle 4, Policy 4.1, Policy 4.2, Principle 5, Policy 5.1, Policy 5.2, (Land Use Element) Goal LU-1, Goal LU-2, Goal LU-3, Goal LU-4, Policy LU 4.1, Goal LU-5, Policy LU 5.7, Goal LU-6, Policy LU 6.1, Policy LU 6.5, Goal LU-7, Policy LU 7.3, Goal LU-17, (Economic Element) Goal EC-1, Policy EC 1.1, Policy EC 1.2, Goal EC-3, Policy EC 3.1, Goal EC-6, Policy EC 6.1, Policy EC 6.2, Policy EC 6.7, Goal EC-8, Policy EC 8.1, Policy EC 8.3, Goal EC-9, Goal EC-10, Goal EC-11, Policy EC 11.1, Policy EC 11.2, Policy EC 11.3, Policy EC 11.4, Policy EC 11.5, (Environmental Element) Goal EN-4, Policy EN 4.1, Policy EN 10.2, Policy EN 10.3, Policy EN 10.6, Policy EN 10.7, Policy EN 10.9, Policy EN 11.2, Policy EN 12.2, Goal EN-13, Policy EN 13.1, (Water Resources Element) Goal WR-1, Policy WR 1.2, Goal WR-2, Policy WR 2.1, Policy WR 2.12, Policy WR 2.13, Goal WR-5, Policy WR 5.1, Policy WR 5.3, Policy WR 5.4, Policy WR 5.8, (Housing Element) Policy HO 1.7, Goal HO-4, Policy HO 4.1, Goal HO-6, Goal HO-7, Policy HO 7.2, Goal HO-8, (Transportation Element) Goal TR-1, Policy TR 1.3, Goal TR-2, Policy TR 2.4, Policy TR 5.3, Policy TR 6.4, Policy TR 6.5, Goal TR8, Policy TR 8.1, Policy TR 8.2, Goal TR-9, Policy TR 9.4, Goal TR-10, Policy TR 10.1, Policy TR 10.2, Policy TR 10.5, Policy TR 10.6, Policy TR 11.3, Policy TR 15.2, Policy TR 15.3, (Capital Facilities Element) Policy CR 2.3; (Utilities Element) Policy U 12.2, Policy U 12.3, Policy U 12.6, Policy U 13.2, Policy U 13.3, Policy U 13.4, Policy U 13.5, Policy U 13.6, Policy U 14.2, Policy U 14.8, Policy U 16, (Cultural Element) Policy CUL 1.5, Goal CUL-2, Policy CUL 2.1, Policy CUL 2.2, Policy CUL 2.3, Policy CUL 3.2, Policy CUL 3.5, Policy CUL 5.6, (Human Services Element) Policy HS 4.2, and Policy HS 4.3. City Staff identified the following Winslow Master Plan Goals and Polices relevant to the proposal: (Land Use) Goal WMP 2-1, Goal WMP 2-2, Policy WMP 2-2.5, Goal WMP 2-3, Policy WMP 2-3.1, Policy WMP 23.2, Policy WMP 2-3.3, Policy WMP 2-3.6, Policy WMP 2-3.7, Goal WMP 2-4, Policy WMP 2-4.1, Goal WMP 2-5, Policy WMP 2-5.1, Policy WMP 2-5.2, Policy WMP 2-6.1, Policy WMP 2-6.2, Policy WMP 2-6.4, (Housing) Goal WMP 3-1, (Open Space and Trails) Goal WMP 4-1, Policy WMP 4-1.1, Goal 4-3, Goal 4-4, Policy WMP 4-4.1, Policy WMP 4-4.2, Policy WMP 4-4.3, Policy WMP 4-4, (Transportation) Goal WMP 6-1, Goal WMP 6-2, Goal WMP 6-3, Goal WMP 6-4, Goal WMP 6-5, Goal WMP 6-7, Goal WMP 6-8, Goal WMP 6-10, Policy WMP 6-11.4, Policy WMP 6-11.5, Policy WMP 6-11.9, Policy WMP 611.11, Policy WMP 6-12.1, Policy WMP 6-12, (Utilities) Goal 8-1, Policy WMP 8-1.2, Policy WMP 8-1.3, Policy WMP 8-1.4, and Policy WMP 8-1.5. *Exhibit 1, Staff Report, pages 10 through 17.*