



# Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36  
[http://www.kitsapgov.com/dcd/lu\\_env/he/](http://www.kitsapgov.com/dcd/lu_env/he/)

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## NOTICE OF HEARING EXAMINER DECISION

November 18, 2009

To: Interested Parties and Parties of Record

RE: Project Name: **Spruce House**  
Applicant: **John Park**  
**BJP LLC**  
**12422 58<sup>th</sup> Avenue NW**  
**Gig Harbor, WA 98332**  
**South Kitsap County, Commissioner District #2**  
Application: **Conditional Use Permit**  
Case Number: **091022 – 022 (222402-3-017-2005; 021-2009) LIS#06 36120**

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

As authorized by Kitsap County Code Section 2.10.120, **REQUESTS FOR RECONSIDERATION** of the Hearing Examiner's Decision in this matter must be filed in writing to the Department of Community Development on or before five (5) business days, **NOVEMBER 23, 2009** from the effective date of the Decision. The filing of a Request for Reconsideration will toll or stay the time for which a Notice of Appeal shall be filed. Please note Reconsideration will be administered at an hourly rate of \$84.00, accounted for in quarter-hour increments; a minimum of one (1) hour will be charged for any Reconsideration. The balance of the fee for Reconsideration must be paid prior to issuance of the Decision.

**THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON DECEMBER 3, 2009. PLEASE NOTE: THE COURTHOUSE WILL BE CLOSED ON NOVEMBER 26 & 27, 2009.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of

**NOTICE OF HEARING EXAMINER DECISION – SPRUCE HOUSE – CONDITIONAL USE PERMIT**

**November 18, 2009**

**Page 2**

County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

**The written appeal shall be made on or attached to an appeal form** provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal,
3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

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

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft

Clerk of the Examiner

C: John Park, BJP LLC < 12422 58<sup>th</sup> AVE NW, Gig Harbor, WA 98332  
William M Palmer, WM Palmer Consultants, PO Box 6, Port Orchard, WA 98366  
Rosendahl & Associates, Civil Engineers, 8378 Provost RD NW, Silverdale, WA 98383

Interested Parties:

See Attached

NOV 16 2009

BEFORE THE HEARING EXAMINER  
FOR KITSAP COUNTY

KITSAP COUNTY DEPT. OF  
COMMUNITY DEVELOPMENT

In the Matter of the Application of	)	No. <del>06 36120</del> 09 1022-022
	)	
BJP, LLC	)	Spruce House
	)	
	)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit to construct a three-story mixed use building with commercial space, condominiums, below grade parking, and surface parking, at the Colchester Drive/Spruce Street intersection in Kitsap County, Washington, is **DENIED**, without prejudice.

**SUMMARY OF RECORD**

Request:

BJP, LLC requests a conditional use permit to construct a three-story mixed use building with commercial space, condominiums, below grade parking, and surface parking at the Colchester Drive/Spruce Street intersection, in Kitsap County, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on October 22, 2009.

Testimony:

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

- William M. Palmer, Applicant Representative
- Dennis Oost, County Planner
- Doug Frick, County Development Engineering
- Carrilu Thompson
- Carol Leinenger
- Frank Tweten
- Shawn Merritt
- Doug Holme

Exhibits:

The following exhibits were admitted into the record:

1. Proposed Site Plans, dated March 25, 2006
2. Pre-Application Meeting Request, received May 1, 2006

*Findings, Conclusions, and Decision*  
Kitsap County Hearing Examiner  
Spruce House CUP, No. 06 36120

3. Kitsap County Assessor's Parcels Map, undated
4. GIS Critical Areas Map, dated August 7, 2006
5. Conditional Use Permit Application, dated May 7, 2007
6. Environmental (SEPA) Checklist with Attachments, dated May 4, 2007
7. Legal Description, undated
8. Project Narrative, undated
9. Kitsap County Public Works Application for Concurrency Test, received May 11, 2007
10. Landscape Plan, dated April 2, 2006
11. Traffic Impact Analysis Report, Heath & Associates, dated April 2006
12. Pre-Application Conference Confirmation Letter, dated June 5, 2006
13. GIS Critical Areas Topographic Map, dated August 7, 2006
14. GIS Comprehensive Plan Map, dated August 7, 2006
15. GIS Building Limitations Map, dated August 7, 2006
16. Kitsap County Assessor's Property Report, dated August 7, 2006
17. Outline for Pre-Application Meeting, dated August 7, 2006
18. Written Summary of Pre-Application Meeting, dated August 9, 2006
19. Email message from Robbyn Meyers Environmental, undated
20. Inactive Letter, dated March 6, 2007
21. Letter from William M. Palmer, dated March 28, 2007
22. Non-binding Certificate of Water Availability Letter, Manchester Water District, dated May 8, 2007
23. Proposed Site Plan, dated May 11, 2007
24. Drainage Report, Rosendahl Engineering, dated May 11, 2007
25. Memorandum from Shawn Shepherd, SK Fire & Rescue, dated May 24, 2007
26. Notice of Complete Application, dated June 25, 2007
27. Notice of Application, dated November 15, 2007
28. Affidavit of Mailing - Notice of Application, dated November 16, 2007
29. Interested Party Letters, dated December 3, 2007
30. Letter from Dennis Oost, dated December 7, 2007
31. Site Plan with Elevations, dated April 2, 2007
32. Amended Conditional Use Permit Application, with attachments, received February 11, 2008
33. Revised Notice of Application, dated January 16, 2008
34. Affidavit of Mailing – Revised Notice of Application, dated January 16, 2008
35. Kitsap County Assessor's Parcel Details, undated
36. 30-Day Letter from Scott Diener, dated April 1, 2008
37. Revised 30-Day Letter from Scott Diener, dated April 7, 2008
38. Technical Review Meeting Attendance Sheet, dated April 16, 2008
39. Letter from William Palmer, dated July 25, 2008
40. Mitigated Determination of Nonsignificance, dated November 24, 2008
41. Notice of Public Hearing, dated November 26, 2008

*Findings, Conclusions, and Decision*  
*Kitsap County Hearing Examiner*  
*Spruce House CUP, No. 06 36120*

42. Affidavit of Mailing – Notice of Public Hearing, dated November 26, 2008
43. Notice of Postponement, dated November 26, 2008
44. Affidavit of Mailing - Notice of Postponement, dated November 26, 2008
45. Email message from David Greetham and Shawn Alire, dated December 9, 2008
46. Transmittal Sheet from David S. Proctor, PLS, dated January 15, 2009
47. Topographic Map, dated January 15, 2009
48. 30-Day Letter, dated June 2, 2009
49. Letter from William Palmer, dated June 18, 2009
50. Memorandum from Dennis Oost, dated June 23, 2009
51. Letter from James E. Barnard, County Development Engineering, dated July 30, 2009
52. 30-Day Letter, dated August 10, 2009
53. Short Plat Site Plan, dated May 10, 2007
54. Notice of Public Hearing, dated October 5, 2009
55. Affidavit of Mailing – Notice of Public Hearing, dated October 5, 2009
56. Memorandum from Dennis Oost to File, dated October 5, 2009
57. Staff Report, dated October 12, 2009
58. Affidavit of Publication – Notice of Public Hearing, dated October 2, 2009
59. Memorandum from Shawn Alire, County Development Engineering, dated October 6, 2009
60. Summons to Shawn A. Merritt and Complaint– Access to Tri-Hutch, LLC Property, dated September 3, 2009
61. Letter from Ron Hutchinson, Managing Partner of Tri-Hutch, dated October 16, 2009
62. Proposed Site Plans, dated April 2, 2007
63. Order and Final Judgment on Land Use Petition Act Appeal, Reversing Decision, Kitsap County Superior Court, dated April 7, 2009, with attached August 2, 2007 and March 2, 2007 Kitsap County Hearing Examiner decisions
64. Proposed Findings of Fact, Spruce House – Mixed-Use CUP, undated
65. Email Distribution list, Kitsap County Report No. 06 36120, dated October 12, 2009
66. Email message return receipt, dated October 21, 2009
67. Letter from Will Longman, undated
68. Letter from Carrilu Thompson, undated
69. Letter from Carole Leininger, with attachments, undated
70. Defendant’s Answer, Affirmative Defenses and Counterclaim to Quiet Title, dated October 21, 2009

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

*Findings, Conclusions, and Decision  
Kitsap County Hearing Examiner  
Spruce House CUP, No. 06 36120*

## FINDINGS

### *Application and Notice*

1. BJP, LLC (Applicant) requests a conditional use permit (CUP) to construct a three-story mixed use building with commercial space, condominiums, below grade parking, and surface parking, at the Colchester Drive/Spruce Street intersection, in Kitsap County, Washington.<sup>1</sup> *Exhibit 5; Exhibit 32.*
2. Kitsap County (County) determined the CUP application was complete on June 25, 2007. *Exhibit 26.* The County mailed notice of the application to appropriate local and state agencies, the Applicant, and owners of property within 400 feet of the property subject to the application on January 16, 2008.<sup>2</sup> *Exhibit 33; Exhibit 34.* The County published notice of the open record hearing associated with the application in the *Port Orchard Independent* on October 2, 2009.<sup>3</sup> *Exhibit 58.* The County mailed notice of the open record hearing associated with the application to appropriate local and state agencies, the Applicant, interested parties, and owners of property within 400 feet of the subject property on October 5, 2009.<sup>4</sup> *Exhibit 54; Exhibit 55.*

### *State Environmental Policy Act (SEPA) Review*

3. The County acted as lead agency and analyzed the environmental impact of the proposed use, as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The County determined that with three conditions, the proposed

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<sup>1</sup> The property subject to the conditional use permit (CUP) application is identified by Tax Parcel Nos. 222402-3-017-2005 and 222402-3-021-2009. A legal description of the subject property is included with the CUP application. *Exhibit 5; Exhibit 32.* Following submittal of the CUP application on May 11, 2007, the Applicant submitted a revised CUP application, received by the County on February 11, 2008. *Exhibit 32.*

<sup>2</sup> The County mailed a revised notice of application on January 16, 2008. *Exhibit 33; Exhibit 34.*

<sup>3</sup> The County first mailed notice of the open record hearing associated with the application to appropriate local and state agencies, the Applicant, interested parties, and owners of property within 400 feet of the subject property on November 24, 2008. *Exhibit 41; Exhibit 42.* On November 26, 2008, the County mailed notice of hearing postponement to appropriate local and state agencies, the Applicant, interested parties, and owners of property within 400 feet of the subject property. *Exhibit 43; Exhibit 44.* According to a timeline submitted by the County, the County received notification of proposed drainage plans in late November 2008, and requested resolution of outstanding issues in February 2009. *Exhibit 56.*

<sup>4</sup> Mr. Palmer, Applicant Representative, testified that he did not receive a copy of the County staff report prior to the open record hearing on the CUP application. Dennis Oost, County Planner, testified that a copy of the staff report was sent to Mr. Palmer by email, in accord with Exhibit 65. Exhibit 65 states an email message from [dcrompto@co.kitsap.wa.us](mailto:dcrompto@co.kitsap.wa.us) was transferred to William Palmer at [wpconsultants@telebyte.net](mailto:wpconsultants@telebyte.net) on October 12, 2009, at 12:30pm, and a message was delivered to the [wpconsultants@telebyte.net](mailto:wpconsultants@telebyte.net) on October 21, 2009, at 4:15pm. *Exhibit 65; Testimony of Mr. Palmer; Testimony of Mr. Oost.*

use would not have a probable significant adverse environmental impact, and issued a Mitigated Determination of Nonsignificance (MDNS) on November 24, 2008. The three conditions concern specific building design elements for compatibility with surrounding property; submittal of a final landscape plan with the Site Development Activity Permit (SDAP) application that complies with Kitsap County Comprehensive Plan policies and the Kitsap County Code (KCC); and construction of Colchester Drive road frontage improvements. *Exhibit 40.*

#### *Comprehensive Plan and Zoning*

4. The Kitsap County Comprehensive Plan (Comprehensive Plan) states that the subject property is located within the Manchester Rural Village, a Limited Area of More Intense Rural Development (LAMIRD).<sup>5</sup> The Comprehensive Plan designates the subject property Manchester Village Commercial (MVC). *Kitsap County Comprehensive Plan Land Use Element, Land Use Map South, Figure 2-2; Kitsap County Comprehensive Plan, Rural and Resource Lands Element, page 3-9 (December 2006); Kitsap County Comprehensive Plan, Manchester Comprehensive Plan Map, Figure 16-1 (December 2006).*
  
5. Comprehensive Plan Rural and Resource Lands Policy RL-29 allows commercial and industrial development within designated LAMIRDs if utilities and other services permit, to provide employment shopping, services, and housing opportunities to reinforce community health and rural resident convenience. Policies RL-30 and RL-31 allow new or expanded commercial and industrial activities for limited and contained growth, infill and redevelopment within LAMIRDs, and encourage new development within LAMIRDs to strengthen desirable characteristics and historic character of the village or community. According to Rural and Resource Lands Policy RL-31, new development shall be supported by necessary public facilities and services, and compatible with historic resources and nearby rural or resource uses. Development should be kept compact, promoting pedestrian travel within the designated area. *Kitsap County Comprehensive Plan, Rural and Resource Lands Element, page 3-11 (December 2006).*

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<sup>5</sup> Comprehensive Plan Rural and Resource Lands Element Goal 6 allows designation of Limited Areas of More Intensive Rural Development (LAMIRD) outside of an Urban Growth Area (UGA), based on existing rural residential communities or villages, areas of mixed use activity, isolated areas of small-scale commercial/industrial activity, and historic towns. *Kitsap County Comprehensive Plan, Rural and Resource Lands Element, page 3-9 (December 2006).* Kitsap County contains four LAMIRDs: Suquamish, Manchester, Port Gamble, and George's Corner. The Manchester and Suquamish LAMIRDs are identified as Rural Villages; Port Gamble is identified as a historic town; and George's Corner is identified as a rural center for commercial uses. *Kitsap County Comprehensive Plan, Rural and Resource Lands Element, page 3-9 (December 2006).*

6. According to the County Comprehensive Plan Rural Villages and LAMIRDs Element, the Manchester Rural Village is Kitsap County's largest LAMIRD, containing approximately 1,133 gross acres of land.<sup>6</sup> The Manchester Rural Village is located in south Kitsap County, east of Port Orchard, Washington. According to the Comprehensive Plan, the Manchester Rural Village consists of commercial businesses and services, a library, a post office, two public docks, single-family residences, and multi-family residences. *Kitsap County Comprehensive Plan, Rural Villages and LAMIRDs Element, page 16-1 (December 2006).*
7. Comprehensive Plan goals and policies are relevant to the proposed use. Relevant Comprehensive Plan goals and policies encourage mixed use development in commercial land use designations; encourage attractively designed commercial land use patterns, with setbacks and screening for developments abutting residential zones or uses; and protect the character of the County's historical commercial areas. *Kitsap County Comprehensive Plan, Land Use Element, pages 2-29 – 2-30 (December 2006).* Comprehensive Plan Rural Villages and LAMIRDs Element Policies Man-4 and Man-5 would establish a commercial zone appropriate for the population and transportation network of the Manchester Village, and would allow land uses consistent with the County's Neighborhood Commercial zoning designation within the Manchester Village Commercial zoning district. *Kitsap County Comprehensive Plan, Rural Villages and LAMIRDs Element, page 16-4 (December 2006).*
8. The Manchester Subarea Plan (Subarea Plan) sets forth goals and policies for zoning, natural systems, and transportation within the Manchester LAMIRD. Relevant zoning goals and policies would protect and enhance the Manchester Village character; promote establishment of a vital Manchester Village Commercial zoning district, with a commercial zone appropriate for the Manchester Village population and transportation network and land uses consistent with the County's Neighborhood Commercial zoning classification; encourage mixed use development within the commercial zone, allowing structures within the Manchester Village Commercial zone to achieve a height of 35 feet; and would protect views to Mount Rainier, Cascade Mountain Range, Puget Sound, and the Seattle skyline, with development creating the least impact to existing views. Relevant zoning goals and policies would also maintain and

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<sup>6</sup> According to Kitsap County Code (KCC) 17.321C.010, the county is authorized to employ the limited areas of more intense rural developments (LAMIRDs) designation to reconcile historical land development patterns. As result of a public planning effort, the Manchester Community Plan was initially developed in 2002, setting specialized goals and policies for the Manchester Village. *Kitsap County Code (KCC) 17.321C.010.*

enhance biological diversity and wildlife habitats, including restoration and enhancement of areas for future use, and preservation of native trees and plant life; encourage development of a safe, efficient multimodal transportation system, with continuous five-foot wide paved pedestrian walkways along Colchester Drive and within the Manchester Village Commercial area abutting County right-of-ways; facilitate transit travel; provide transportation improvements concurrent with development; encourage connections to the existing sewer system; and support comprehensive stormwater management, utilizing natural drainage systems and limiting impervious surface; *Kitsap County Comprehensive Plan, Rural Villages and LAMIRDS Element, pages 16-3 – 16-8 (December 2006).*

9. The subject property is located within the County's Manchester Village Commercial (MVC) zoning district. *Exhibit 57, Staff Report, page 3.* A mixed use development is an allowed use in the MVC zoning district with an administrative CUP.<sup>7</sup> *Kitsap County Code (KCC) Table 17.381.040(D).* KCC 17.420.020.D requires a public hearing when a component of development located within a commercial zone involves the conversion of previously undeveloped land which abuts a residential zone, and also provides that the County Community Development Director may refer any proposal under KCC 17.420.020 to the Hearing Examiner for review and decision. *KCC 17.420.020.D.* The County staff report states that the proposed development meets KCC 17.420.020.D criteria for a public hearing on the CUP application. *Exhibit 57, Staff Report, page 8.*
10. In accord with KCC 17.382.035, total floor area devoted to residential uses in any mixed use development project shall not exceed 80-percent of the proposed gross floor area, and total gross floor area dedicated to commercial uses shall not exceed 50-percent of the proposed gross floor area. *KCC 17.382.035.* The proposed mixed use building is limited to a maximum development density of 24 dwelling units per acre and a minimum development density of 5 dwelling units per acre. The proposed mixed use building is limited to 35 feet in height.<sup>8</sup> *Exhibit 57, Staff Report, page 4.*

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<sup>7</sup> An administrative CUP is a Type II decision reviewed by the County Department of Community Development Director. *KCC Table 21.04.030.*

<sup>8</sup> The County did not adopt a Manchester Subarea Plan update to limit height within the Manchester Village until December 17, 2007. The County determined the CUP application was complete on June 25, 2007. Thus, the proposed use is not bound by the December 17, 2007 Subarea Plan update, which otherwise limits commercial structures to 28-feet in height. *Exhibit 57, Staff Report, page 8.*

### *Subject Property and Project Proposal*

11. The subject property is located at the northeast corner of the Colchester Drive/Spruce Street intersection in the Manchester commercial center, and is 0.53 acres (23,296 square feet) in size. The subject property contains an existing residential duplex and an existing single-family dwelling, with residential lawns and landscaping. According to a short plat map submitted by the Applicant, an existing gravel driveway extends north across the subject property from Spruce Street, adjacent to the east of an existing residence. According to a building limitations map submitted by the County, the subject property is located less than 1,000 feet west of Puget Sound. *Exhibit 10; Exhibit 15; Exhibit 53; Exhibit 57, Staff Report, page 3; Exhibit 64.*
12. As proposed, the Applicant would construct a three-story mixed use building on the subject property. The ground floor would contain approximately 7,455 square feet of commercial space and 19 surface parking stalls. Mr. Palmer testified that the ground floor would contain retail commercial space. Together, the second and third floors would contain approximately 11 residential condominium units, for a total of approximately 22,704 square feet of residential space and a development density of approximately 20.7 dwelling units per acre.<sup>9</sup> Approximately 40 parking stalls would be constructed below grade. The Applicant would set aside a 15 square foot area within the subject property for an informal sign kiosk and a bench for seating. The Applicant would also improve Colchester Drive and Spruce Street as a part of the proposed project, constructing curb, gutter, and a six-foot-wide sidewalk where none currently exists. *Exhibit 57, Staff Report, page 5; Exhibit 64.*

### *Surrounding Property and Uses*

13. Property adjacent to the north and west of the subject property is located within the County's MVC zoning district. Property adjacent to the east and south of the subject property is located within the County's Manchester Village Residential (MVR) zoning district. According to the County staff report, a post office is located adjacent to the north of the subject property, and moderate commercial development is located adjacent to the west. Single-family residences are located adjacent to the east and south of the subject property. *Exhibit 57, Staff Report, page 4.*
14. On September 3, 2009, Tri-Hutch, owner of the property subject to the CUP application,<sup>10</sup> filed a complaint in Kitsap County Superior Court against Shawn

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<sup>9</sup> The calculation is 11 dwelling units / 0.53 acres = approximately 20.75 dwelling units/acre.

<sup>10</sup> Ron Hutchinson, Tri-Hutch Managing Partner, expressed support for the proposed use in a letter dated October 16, 2009. *Exhibit 61.* At the open record hearing, Mr. Palmer testified that a contract is currently pending between Tri-Hutch and the Applicant. *Testimony of Mr. Palmer.*

and Jane Doe Merritt, owners of property adjacent to the east of the Tri-Hutch property. In its complaint, Tri-Hutch alleged that a structure located on the Merritt property encroaches approximately four feet onto the Tri-Hutch property and encroaches into the setback area. Tri-Hutch also alleged that owners of the Merritt property use the Tri-Hutch property for ingress and egress to the Merritt property. Tri-Hutch requested that the Superior Court order the owners of the Merritt property to remove the encroachment and to end use of the Tri-Hutch property. A short plat map received May 11, 2007 by the County depicts a garage and asphalt pad extending over the subject property boundary, with a related notation that “any title issues [are] to be resolved prior to Final Short Plat.” *Exhibit 53; Exhibit 60.*

15. On October 21, 2009, Shawn Merritt and Jane Doe Merritt filed an answer to the Tri-Hutch complaint in Kitsap County Superior Court.<sup>11</sup> The answer alleges that a structure owned by Tri-Hutch encroaches onto the subject property, and that Mr. Merritt has rights to use the subject property. The answer alleges that Mr. Merritt and predecessor in interest to the Merritt property obtained rights by adverse possession over approximately the east five feet of the South 37.5 feet of the north 50 feet of the subject property, and that Tri-Hutch gave consent or otherwise failed to object to the construction of improvements on the encroaching property. The answer also alleges that Mr. Merritt and predecessors in interest to the Merritt property obtained a prescriptive easement to use the east 25 feet of the Tri-Hutch property for ingress and egress, by use of that section of the Tri-Hutch property for ingress and egress for more than 10 years. The answer filed with the Court requests that the Court dismiss the Tri-Hutch complaint, and issue a judgment declaring Mr. Merritt owns a prescriptive easement for ingress and egress and quieting Mr. Merritt’s title. *Exhibit 70.*
16. Mr. Palmer testified that the Applicant does not want the owners of the Merritt property to change the structure which may or may not be encroaching on the subject property, but does want the owners of the Merritt property to change the access way to the structure. Mr. Palmer testified that the ongoing lawsuit between Tri-Hutch and Mr. Merritt would determine access rights to the subject property and any encroachment upon the subject property. *Testimony of Mr. Palmer.*
17. Shawn Merritt testified that the existing garage does encroach onto the property boundary, and that the access way leading to the garage has long been shared by owners of the Merritt property and owners of the subject property. Mr. Merritt

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<sup>11</sup> The answer filed with Kitsap County Superior Court stated that Mr. Merritt is not married. *Exhibit 70.*

testified that the proposed use would not be consistent with existing development surrounding the subject property. *Testimony of Mr. Merritt.*

#### *Access and Traffic Impacts*

18. Spruce Street is located adjacent to the south of the subject property, and Colchester Drive is located adjacent to the west of the subject property. To the north of the subject property, Colchester Drive intersects with E. Main Street. To the west of the subject property, Spruce Street intersects with Spring Avenue E. Denniston Lane is located east of the subject property, and intersects with E Main Street to the northeast of the subject property. *Exhibit 11.*
19. Proposed findings of fact submitted by the Applicant state that vehicles would access the proposed below grade parking garage from Colchester Drive, near the subject property's northwest corner. At the open record hearing, Mr. Palmer testified that vehicles would access proposed surface parking from Spruce Street. *Exhibit 64; Testimony of Mr. Palmer.*
20. A Traffic Impact Analysis Report (Report) submitted by the Applicant, dated April 2006, states there would be adequate entering vehicle sight distance at the proposed Colchester Drive and Spruce Street entrances. The Report estimated that the proposed use would generate 333 average week day vehicle trips, with 16 vehicle trips per hour during the A.M. peak period, and 28 vehicle trips per hour during the P.M. peak period. According to the Report, the Colchester Drive/Spruce Street intersection, Colchester Drive/E. Main Street intersection, Spruce Street/entrance to the proposed use intersection, and the Colchester Drive/entrance to the proposed use intersection would operate at Level of Service (LOS)<sup>12</sup> B or better in the year 2012 with or without development of the proposed use. *Exhibit 11.*
21. The Applicant would construct sidewalks or pedestrian walkways and a bike lane along proposed development's Colchester Drive frontages. The Applicant would also construct sidewalks and a small courtyard on the west side of the proposed use to connect to the proposed off-street parking behind the proposed commercial space. The Applicant would construct a stamped concrete pedestrian walkway with curb cuts along the proposed development's Colchester Drive frontage to access proposed underground parking. *Exhibit 57, Staff Report, page 9.*

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<sup>12</sup> Level of service (LOS) is a measure of operational quality that describes operational conditions within a traffic stream. Letters designate each level of quality, with LOS A representing the best operating conditions, and LOS F the worst. Each LOS represents a range of operating conditions and the driver's perception of those conditions. *Exhibit 11.*

22. KCC 17.321C.060 sets forth off-street parking requirements for commercial uses within the Manchester Village. *KCC 17.321C.060*. According to KCC 17.321C.060, off-street parking requirements vary according to the type of commercial use and amount of traffic that would be generated by the use. County staff would review proposed vehicle parking spaces at the time of the Applicant's building permit application, because tenants that would occupy proposed commercial space are unknown at this time. The County staff report states that proposed below grade parking would meet KCC 17.435.030 off-street parking requirements for multi-family residential units by providing at least 1.5 spaces per multifamily unit plus 0.5 spaces per unit on the street or set aside. *KCC 17.321C.060; KCC 17.435.030; Exhibit 57, Staff Report, page 5.*

#### *Landscaping*

23. KCC 17.385.025 provides "in all cases where landscaping is required, a minimum of fifteen percent of the total site area shall be landscaped to the standards set forth in Chapter 17.385." *KCC 17.385.025*. KCC 17.385.010 states that landscaping standards set forth in Ch. 17.385 KCC apply to all development subject to permitted, conditional use, or performance based development requirements. *KCC 17.385.010*.
24. The Applicant submitted a proposed landscape plan for the proposed use, dated April 2, 2007. The proposed landscape plan depicts a rooftop garden within the northeast corner of the proposed mixed use building, and landscaping established on top of the second floor level of the proposed mixed use building, along the west face and southwest corner of the proposed building. According to the proposed landscape plan, proposed landscaping area would total 4,083 square feet in area. Of the total proposed landscaping area, approximately 1,470 square feet of proposed landscaping would be located on top of the second floor level of the proposed building; approximately 1,596 square feet would be located at surface level within public right-of-way; and approximately 2,613 square feet would be located at surface level outside public right-of-way. According to proposed site plans dated April 26, 2007, proposed landscaping area would comprise 17.37-percent of the subject property. *Exhibit 10; Exhibit 62.*
25. County staff determined that as proposed, less than 15-percent of the total site area would contain landscaping meeting Ch. 17.385 KCC requirements. County staff determined that 11.33-percent of the total site area of the subject property would consist of landscaping meeting Ch. 17.385 KCC requirements. According to the County staff report, staff does not consider building planters, rooftop gardens, or landscaping in the public right-of-way (ROW) as landscaping that

meets Ch. 17.385 KCC requirements. According to the County staff report, the Applicant must submit a final landscape plan for County review at the time of Site Development Activity Permit (SDAP) review. *Exhibit 57, Staff Report, page 10.*

26. Proposed findings of fact submitted by the Applicant state that landscaping would cover more than 15-percent of the total site area of the subject property, and that the Applicant interprets KCC 17.385.025 differently than County staff. Findings of fact argue that landscaping placed in containers on top of a building counts toward the 15-percent landscaping requirement, because landscaping on a building occupies a portion of the site, contains plants or shrubs, and meets Ch. 17.385 KCC requirements. Proposed findings of fact also argue that Ch. 17.385 KCC does not define total site area.<sup>13</sup> Mr. Palmer testified that March 2, 2007 and August 2, 2007 Kitsap County Hearing Examiner decisions governing property other than the subject property support the Applicant's interpretation of KCC 17.385.025.<sup>14</sup> *Exhibit 62; Exhibit 63; Exhibit 64; Testimony of Mr. Palmer.*
27. Mr. Oost responded for the County that County staff analyzes each development proposal on its own merits. Mr. Oost testified that landscaping complying with Ch. 17.385, KCC must remain permanent, must survive over time, and must be present over the long-term in the years following project completion. Mr. Oost testified that landscaping placed on top of the proposed building would not exhibit these characteristics. *Testimony of Mr. Oost.*

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<sup>13</sup> KCC 17.110.683 defines "site" as "the spatial location of an actual or planned development. A site may contain multiple lots or parcels, excluding public right of way." *KCC 17.110.683.* KCC 17.110.390 defines "landscaping" as "'Landscaping' means the placement, preservation, and the replacement of not only trees, grass, shrubs, plants, flowers, and other vegetative materials but also the arrangement of fountains, patios, decks, street furniture, and ornamental concrete or stonework areas and artificial turf or carpeting in accordance with an approved landscaping plan meeting adopted landscaping plan, design, and installation standards. Artificial plants, shrubs, bushes, flowers, and materials in movable containers shall not be considered "landscaping" for purposes of this title." *KCC 17.110.390.*

<sup>14</sup> Mr. Palmer testified that the Hearing Examiner is not bound by any precedent allegedly established by previous decisions of the Kitsap County Hearing Examiner. County Hearing Examiner Stephen K. Casseaux, Jr. issued the March 2, 2007 and August 2, 2007 Kitsap County Hearing Examiner decisions. The decisions concerned the request of BJP, LLC for site plan review approval for the Colchester Commons mixed use development within Manchester Village. The decisions determined that a submitted site plan depicted landscaping covering more than 15-percent of the Colchester Commons site, and an additional 1,400 square feet of landscaping within County right-of-ways. The March 2, 2007 decision stated that the Applicant originally proposed landscaping within the right-of-way, then altered proposed landscaping to meet the 15-percent requirement outside the right-of-way. A condition of Colchester Commons site plan review approval required landscaping to meet or exceed Ch. 17.385 KCC minimum requirements, and requires that all plantings over structure are contained in planters with proper drainage and soils. *Exhibit 63; Testimony of Mr. Palmer.*

28. The County staff report states that the proposed use would include fencing along the east perimeter of the use for compatibility with adjacent property to the east located in a residential zone. The Applicant would establish building façade plantings along the southwest corner of the subject property and along the east perimeter of the property. Solid waste and recycling enclosures would be screened and located near the southeast corner of the proposed use. The Applicant would also construct a concrete parapet wall with a six-foot high fence on the property line to screen proposed surface parking from the abutting residential zone. The County staff report concludes that some of the area of landscaping proposed by the Applicant would occur on land subject to the encroachment dispute between Tri-Hutch, owners of the subject property, and Mr. Merritt, adjacent property owner. *Exhibit 57, Staff Report, pages 9 - 10.*
29. Mr. Palmer testified that upon development of the proposed use, approximately 17-percent of the subject property would contain landscaping. Mr. Palmer also testified that landscaped area would include landscaping established in containers on the second floor of the proposed use, and that approximately two- to three-percent of total landscaping is proposed for the land subject to the encroachment dispute. Proposed site plans dated April 2, 2007 depict landscaping adjacent to a structure labeled "Garage" extending over the subject property boundary. *Exhibit 62.*

#### *Stormwater Management*

30. A proposed Storm and Grading Plan dated May 11, 2007, depicts catchbasins in the northeast, southeast, and southwest corners of the subject property. According to the Plan, stormwater runoff collected in the southwest catchbasin would flow east through a closed conveyance system of pipes located within Spruce Street to the southeast catchbasin. Stormwater runoff collected in the northeast catchbasin would flow south through a trench drain to a Stormfilter water quality system, located adjacent to the north of the southeast corner catchbasin, before exiting the site through the closed conveyance system within Spruce Street. According to the Applicant's Drainage Report, dated May 11, 2007, stormwater runoff would exit the subject property through the closed conveyance system in Spruce Street, flow east to an existing catchbasin, then continue east into an outfall on Puget Sound. *Exhibit 23; Exhibit 24.*
31. The Applicant's Drainage Report dated May 11, 2007, states that the subject property drains from west to east over less than 10-percent grade. The Report describes "offsite drainage onto property" as "minimal drainage coming from half of Colchester Drive where it fronts the subject property." The Report also states there are no known storm detention facilities within the project's upstream basin, and that "there are no obvious drainage or erosion problems within the project

parcel or the upstream basin.” According to the Report, a culvert at the southwest corner of the subject property discharges stormwater runoff from Colchester Drive into a ditch along the south boundary of the subject property, bypassing any drainage facilities on the subject property. The Report states that stormwater runoff currently sheet-flows east and south from the subject property, or runs into the ditch at the south boundary. From the ditch, runoff is conveyed through an existing culvert and closed conveyance system east to an existing catch basin, then into Puget Sound. *Exhibit 24.*

32. A July 30, 2009 County Department of Community Development memorandum states that the stormwater drainage plan submitted by the Application depicts a system by which stormwater would be conveyed through a privately maintained storm system. The memorandum also states that the Applicant must obtain an easement to use the privately maintained storm system. The County staff report states that as of October 12, 2009, the owner of the privately maintained storm system has not granted a stormwater easement to the Applicant. *Exhibit 51; Exhibit 57, Staff Report, page 4.*
33. According to an October 6, 2009 memorandum from Shawn Alire, County Development Engineering, County Development Engineering staff reviewed the proposed application site plan and materials, received May 11, 2009, and found the concept presented unsupportable in its approach to civil site development. The memorandum cites KCC 12.20.090(c) for the development standard that downstream conveyance facilities must have sufficient capacity to convey the peak flows from the development.<sup>15</sup> The memorandum states that the Applicant has not submitted a stormwater design that complies with Kitsap County Stormwater Management Ordinance and Design Manual (Stormwater Design Manual) Section 2.3.3 requirements, and has not submitted a drainage easement or a proposal for improvements. The memorandum concludes that the existing downstream conveyance facilities that would serve the proposed development do not appear to have sufficient capacity for the development. *Exhibit 59.*

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<sup>15</sup> KCC 12.20.090 requires that all proposed developments provide on-site storm water conveyance facilities having sufficient capacity to convey, without flooding or otherwise damaging existing or proposed structures, the post-development peak storm water runoff rate resulting from a one-hundred-year, twenty-four-hour duration storm event, plus any existing upstream runoff that will be conveyed through the development site. KCC 12.20.090 also requires that peak storm water runoff rates used in the design of water conveyance facilities shall be estimated by either the rational method or a hydrograph method of analysis accepted by the County Department of Public Works director or designee. *KCC 12.20.090.*

34. Doug Frick, County Development Engineering, testified that the materials submitted by the Applicant to date do not describe the drainage basin upstream from the proposed use, and thus do not permit one to calculate whether the proposed stormwater management system would have sufficient capacity to collect and divert stormwater runoff from the proposed use. Mr. Frick also testified that materials submitted by the Applicant do not indicate permission has been granted to upgrade the privately maintained storm system that the Applicant would use to collect and divert stormwater runoff from the proposed use.  
*Testimony of Mr. Frick.*
35. Mr. Oost testified that the County first received notice of the need for a drainage easement to implement the Applicant's proposed stormwater management solution on November 26, 2008. Mr. Oost testified that the County postponed the initially scheduled open record hearing on the CUP application in an attempt to resolve the easement issue, as well as encroachment dispute over the subject property. Mr. Oost added that the County contacted the Applicant by letter more than once to determine whether the easement issue had been resolved, prior to receiving a copy of the Tri-Hutch Summons and Complaint, dated September 3, 2009. *Testimony of Mr. Oost.*
36. Mr. Palmer testified that the subject property and property in the vicinity has no history of flooding. Proposed findings of fact submitted by the Applicant state that if the proposed stormwater management system is untenable, stormwater runoff from the proposed use could be collected and routed through underground pipes to a County-maintained manhole at the Dennison Alley/Spruce Street intersection. In the alternative, proposed findings of fact state that an existing discharge pipe from the County manhole is adequate in size to collect and divert stormwater runoff that would be generated by the proposed project. Mr. Palmer testified the Applicant has additional stormwater management options, should the proposed stormwater management system prove untenable: the Applicant could divert stormwater runoff to a public street and culvert; divert stormwater runoff into conveyance systems within Colchester Drive; or obtain an easement from seven different property owners to divert stormwater down the Denison alley. Mr. Frick testified that the Applicant could alternatively divert stormwater runoff down the alley to the County stormwater collection system in E. Main Street, but that the Applicant has not presented the option as its preferred stormwater management method. *Exhibit 64; Testimony of Mr. Palmer; Testimony of Mr. Frick.*
37. Proposed findings of fact submitted by the Applicant state that the proposed stormwater management system relies on flow through a pipe located on private property. Mr. Palmer testified for the Applicant that the Applicant does not have

an easement to use the pipe, but the County has a prescriptive easement for use of the pipe. Mr. Palmer testified that the County obtained the easement for use of the pipe as it carries stormwater runoff from several sites along Spruce Street and some runoff from Colchester Drive. *Exhibit 64; Testimony of Mr. Palmer.*

38. Mr. Frick responded for the County that the County does not have a prescriptive easement for use of the pipe. Mr. Frick testified that any responsibility the County has for maintenance of the pipe ends at an existing catch basin adjacent to Spruce Street, and that the County would need to work with the private property owner to resolve issues concerning the catch basin or areas downstream. *Testimony of Mr. Frick.*

39. Mr. Palmer testified that the County's June 25, 2007 determination of CUP application completeness means that the Applicant's drainage report meets County stormwater regulations. Mr. Palmer also testified that County staff stated the proposed stormwater management system was sufficient to meet County stormwater regulations during an April 16, 2008 technical review meeting. Mr. Palmer added that he did not maintain a written record of the technical review meeting. A July 25, 2008 letter from William Palmer Consultants addressing issues discussed at the April 16, 2008 technical review meeting does not mention stormwater management. *Exhibit 39; Testimony of Mr. Palmer.*

40. Proposed findings of fact submitted by the Applicant cite Kitsap County Stormwater Manual Section 12.2.2.1, which provides "the preliminary drainage review documents shall include a Preliminary Drainage Plan and a Preliminary Drainage Report. The level of design shall be sufficient to demonstrate project feasibility." Mr. Palmer testified that the Applicant has met that burden through submittals to the County. Proposed findings of fact state that "the final solution for how to handle the discharge of stormwater is a decision that is best addressed once project approval has been granted." Mr. Frick responded that any statement that the Applicant had met preliminary submittal requirements was based on an assumption that the Applicant would have access to the stormwater management system chosen by the Applicant as the preferred stormwater management method. *Exhibit 64; Testimony of Mr. Palmer; Testimony of Mr. Frick.*

#### *Public Utilities and Services*

41. The proposed use would obtain water service from the Manchester Water District, and sewer from Kitsap County. The Kitsap County Sheriff would provide police services, and South Kitsap Fire and Rescue would provide emergency fire services. Puget Sound Energy would provide electric power to the proposed use. *Exhibit 22; Exhibit 57, Staff Report, page 4.*

*Public Comment*

42. The County received letters from interested parties commenting on the proposed use. Letters from interested parties expressed concern that the proposed project scale would be inconsistent with surrounding development and the Manchester Subarea Plan; development of the proposed use would worsen stormwater runoff and drainage problems in the vicinity; and development of the proposed use would worsen parking and traffic problems in the vicinity. Letters also expressed concern that proposed below grade parking would not adequately drain groundwater present in the area; that the commercial portion of the proposed development would experience high vacancy rates; and that sidewalks and bicycle lanes be constructed by the Applicant as part of the proposed development. Letters noted the existence of a similar development under construction at the Colchester Drive/E. Main Street intersection known as “The Anchors”, or “Manchester Commons”, and significant groundwater present near the surface upon excavation. *Exhibit 29.*
43. An undated letter from Will and Theresa Longman expresses concern that the Applicant has not proposed a viable stormwater plan, and that architectural plans for the proposed project are not consistent with the surrounding area. The letter also expresses concern that vehicle traffic generated by the proposed use would overwhelm the Kingston downtown area, and that proposed below-grade parking lot construction is not justified when considering the location of the water table in the region. *Exhibit 67.*
44. Carrilu Thompson testified that she participated in the initial Manchester Village planning process, and that parking, stormwater, and related groundwater concerns must be addressed for any new development in Manchester Village. Ms. Thompson testified that underground parking should not be constructed in an area of uninterrupted groundwater. Ms. Thompson recommended denial of the CUP application for lack of sufficient detail concerning groundwater and stormwater management on the site of the proposed use. Ms. Thompson added that she had not reviewed any specific stormwater management proposal submitted by the Applicant. Ms. Thompson submitted a letter expressing concern that excavation for underground parking as part of the proposed use would encounter ground water, and that the proposed project does not include an adequate stormwater conveyance system. The letter stated that residences located to the north, south, and east of the subject property experience standing water and storm water flooding on a regular basis during the rainy season. The letter expresses concern that the County should apply the most stringent provisions for stormwater management, and recommends that the CUP application be denied. *Exhibit 68; Testimony of Ms. Thompson.*

45. Carole Leininger testified to her concerns that the proposed project would be inconsistent with surrounding development, and recommended denial of the CUP application. At the open record hearing, Ms. Leininger also submitted a letter expressing concern that the proposed use would not be consistent in size, scale, or character with the Manchester village. The letter states a two-story residential structure is located to the south of the subject property, a one-story post office is located to the west, and residential properties are located to the east. The letter recommends that the CUP application be denied as inconsistent with Manchester village character and as insufficient for stormwater management. *Exhibit 69; Testimony of Ms. Leininger.*
46. An April 2, 2007 set of proposed elevation drawings attached to the letter depict a three-story building façade with a pitched roofline. Arched windows would be present on the ground level west-facing façade, and additional windows would be placed on the second- and third-story of the proposed mixed use building. A July 25, 2008 letter from William Palmer, Applicant Representative, attached to the Leininger letter states that the CUP application was determined complete prior to the County's December 2007 adoption of Manchester Design Standards for the Manchester Village Commercial District. *Exhibit 69.*
47. Doug Holme, owner of a restaurant in the vicinity of the proposed use, testified in opposition to the proposed use, and recommended denial of the CUP application. Frank Tweten, current owner of a Manchester Place project in the vicinity of the proposed use, testified in support of the proposed use. Mr. Tweten testified that stormwater runoff from the proposed use could be collected and diverted from the subject property in a manner complying with Kitsap County stormwater regulations. *Testimony of Mr. Holme; Testimony of Mr. Tweten.*

*County Staff Recommendation and Applicant Response*

48. County staff recommended that the Hearing Examiner deny the proposed use, stating that the proposal does not comply with Title 17 KCC requirements, including landscaping and parking requirements, and that the proposed project could be materially detrimental to property in the immediate vicinity for lack of a viable stormwater management system. *Exhibit 57, Staff Report, page 12.*
49. Mr. Palmer testified that the proposed use complies with the County Comprehensive Plan and applicable Kitsap County Code provisions so the CUP application should be approved by the Hearing Examiner. *Testimony of Mr. Palmer.*

## CONCLUSIONS

### Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide conditional use permit requests. *Kitsap County Code (KCC) 2.10.070; KCC 17.421.020.A; KCC Table 21.04.030.*

### Criteria for Review

#### *Conditional Use Permit*

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with the applicable requirements of this title;
3. The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

As a condition of approval, the Hearing Examiner may:

1. Increase requirements in the standards, criteria, or policies established by this title;
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.382;
4. Include requirements to improve parity with other uses permitted in the same zone protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The Hearing Examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;

7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.

*KCC 17.421.030.*

#### Conclusions Based on Findings

1. **The proposed use would be consistent with the Comprehensive Plan.** The subject property is located within the Manchester Rural Village, a Limited Area of More Intense Rural Development (LAMIRD), and is designated Manchester Village Commercial (MVC). The proposed commercial and multi-family residential use would provide commercial and multi-family residential development within a proposed mixed use building served by public utilities, consistent with Comprehensive Plan goals and policies encouraging mixed use development in commercial land use designations and allowing new commercial development within designated LAMIRDs when utilities and other services permit. Conditions of the County's Mitigated Determination of Nonsignificance (MDNS) would require specific building design elements to ensure compatibility with surrounding property, consistent with Comprehensive Plan goals and policies. *Findings 1, 3, 4 – 8, 12.*
2. **The proposed use would comply with the applicable requirements of KCC Title 17.** The subject property is located within the County's Manchester Village Commercial (MVC) zoning district. A mixed use development is an allowed use within the in the MVC zoning district with a conditional use permit, which may be reviewed and decided by the Hearing Examiner in accord with KCC 17.420.020.D. Proposed gross floor area that would be devoted to residential uses and commercial uses within the proposed mixed use development would comply with KCC 17.382.035 requirements, and proposed residential development density would be less than maximum allowed development density. County staff would review compliance with KCC Title 17 off-street parking requirements at the time of building permit application, and would review proposed landscaping for compliance with KCC Title 17 landscaping requirements at the time of Site Development Activity Permit (SDAP) review. *Findings 1, 9 - 12 , 22 – 25.*

*Findings, Conclusions, and Decision  
Kitsap County Hearing Examiner  
Spruce House CUP, No. 06 36120*

**3. The proposed use would be materially detrimental to uses or property in the vicinity.**

A portion of the property subject to the CUP application is currently the subject of a recently filed, ongoing lawsuit in Kitsap County Superior Court disputing rights to use the property and alleging property encroachment. The proposed use would include development on property that subject to the ongoing lawsuit, as approximately two- to three-percent of total proposed landscaping is proposed for land subject to the encroachment dispute. The Hearing Examiner has no jurisdiction to resolve the ongoing lawsuit in Kitsap County Superior Court. To date, the parties have not entered into a voluntary settlement. Because use of the property and property encroachment on which landscaping is proposed is still in dispute, development of the proposed use in an area to which the Applicant potentially has no rights would be materially detrimental to uses or property in the immediate vicinity. In addition to property subject to the ongoing lawsuit, applicant's proposed use would also rely on use of private property for stormwater runoff management, to which the Applicant has no use rights. The Applicant does not own the privately maintained storm system on which the Applicant would rely for management of stormwater runoff, and the Applicant has not been granted a right to use the privately maintained system by the owner of the system. Whether the County has a right to use the system is immaterial to whether the Applicant has a right to use the system. The Applicant's intent to rely on use of private property for stormwater runoff management over which the Applicant has no ownership or use rights, is by its nature, materially detrimental to uses or property in the immediate vicinity of the subject property. Kitsap County Code (KCC) 17.421.030 does not authorize the Hearing Examiner to approve a proposed use when the use would be materially detrimental to uses or property in the immediate vicinity. Thus, the resolution of the problems raised by the County on stormwater runoff management is not best addressed once project approval is granted, as the Applicant contends, but is a prerequisite to approval of the Conditional Use Permit. As the proposed use does not meet Criteria No. 3 for CUP approval set forth in KCC 17.421.030, no further analysis is required. The Kitsap County Board of County Commissioners adopted KCC 17.421.030 to ensure that certain proposed uses receive additional scrutiny by the reviewing body. Applying that additional scrutiny, the Hearing Examiner finds that the proposed use, if approved, would cause material detriment to surrounding property and uses, given the current property disputes surrounding required stormwater management and landscaping for the proposed use. While the proposed project may be a worthy project for the area consistent with Comprehensive Plan goals and policies, after reviewing all the evidence, including testimony of County staff, the Applicant, and the public, criterion 3 is not met and the application must be denied, without prejudice. *Findings 1, 12 – 17, 24, 28 – 40.*

**DECISION**

Based upon the preceding Findings and Conclusions, the request for a conditional use permit (CUP) to construct a three-story mixed use building with commercial space, condominiums, below grade parking, and surface parking, at the Colchester Drive/Spruce Street intersection in Kitsap County, Washington, is **DENIED**, without prejudice.

Decided this 11<sup>th</sup> day of November 2009.



KIMBERLY A. ALLEN  
Hearing Examiner

**RECEIVED**

NOV 16 2009

KITSAP COUNTY DEPT. OF  
COMMUNITY DEVELOPMENT

LAST NAME FIRST NAME	Street	City	ST	ZIP	
ABRAMSON CRAIG	2803 CASCADIA AVE S	SEATTLE	WA	98144	<a href="mailto:craig2803@comcast.net">craig2803@comcast.net</a>
AVERY JIM	855 COLCHESTER	MANCHESTER	WA	98366	
BURBRIDGE LYLEM & DENISE	2422 1ST AVE	MANCHESTER	WA	98353	
FREDERIKSE J	PO BOX 27	PORT ORCHAF	WA	98366	
HARRIS TERRI & GREG	PO BOX 573	MANCHESTER	WA	98353	
HOLME DOUG & CERISSA	PO BOX 510	MANCHESTER	WA	98353	
HUTCH TRI	PO BOX 482	MANCHESTER	WA	98383	
KOWALSKI CAROL	PO BOX 82	MANCHESTER	WA	98353	
LENNINGER CAROLE	PO BOX 528	MANCHESTER	WA	98353	<a href="mailto:carole9@ix.netcom.com">carole9@ix.netcom.com</a>
MCBRIDE TONI	<a href="mailto:TGMCBRI@MSN.COM">TGMCBRI@MSN.COM</a>				
MERRITT SHAWN	PO BOX 400	MANCHESTER	WA	98353	
PALMER WILLIAM	PO BOX 6	PORT ORCHAF	WA	98366	
PAQUETTE PHIL	PO BOX 583	MANCHESTER	WA	98353	<a href="mailto:nucphil@earthlink.net">nucphil@earthlink.net</a>
PARDO RAY	8414 E CARAWAY RD	PORT ORCHAF	WA	98366	<a href="mailto:raypardo@att.net">raypardo@att.net</a>
ROSENDAHL NELS	1950 LOST CREEK LN	BREMERTON	WA	98312	<a href="mailto:nels@platsplus.net">nels@platsplus.net</a>
THOMPSON CARRILU	PO BOX 431	MANCHESTER	WA	98353	<a href="mailto:carriwho@aol.com">carriwho@aol.com</a>
WALTERS ROBERT & MATTIE	7849 E MAIN ST	MANCHESTER	WA	98353	<a href="mailto:matt360@wavecable.com">matt360@wavecable.com</a>
WINSLOW JOHN	PO BOX 502	MANCHESTER	WA	98353	

[bobcat1@wave](mailto:bobcat1@wave)

SPRUCE HOUSE 10-26-09