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**THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

IN RE:	HE-24-PL-022
KULSHAN COMMUNITY LAND TRUST, Applicant	FINDINGS, CONCLUSIONS, AND DECISION - CITY SPROUTS FARM
2912 Birchwood Avenue	SHARON A. RICE
USE2024-0012	HEARING EXAMINER

SUMMARY OF DECISION

The request for a conditional use permit to authorize the ongoing operation of the City Sprouts Farm as an agricultural nursery at 2912 Birchwood Avenue is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Ali Taysi of AVT Consulting LLC, on behalf of Kulshan Community Land Trust (KCLT, Applicant), requested approval of a conditional use permit (CUP) to operate an agricultural nursery at 2912 Birchwood Avenue, Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request, along with associated requests for a preliminary plat and Incentive Program for Innovative Affordable Homeownership project on the same property, on September 25, 2024. The record was held open two business days to allow for post-hearing written public comment, with additional days for responses by the parties. Post-hearing comments and responses were timely submitted, and the record closed on October 1, 2024.

No in-person site visit was conducted, but the Examiner viewed the subject property and surroundings on Google Maps.

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Testimony:

At the hearing, the following individuals presented testimony under oath:

- Kathy Bell, Senior Planner
- Ali Taysi, AVT Consulting LLC, Applicant’s Representative
- Michele Philhower, Finance and Operations Manager, KCLT
- Dan Welch, Project Architect
- Ellie Duncan, Farm Manager, City Sprouts Farm
- JoAnn Padgett
- Heather Richendrfer
- Mary Lou White
- Louise Bjornson
- Travis Tennessen
- Joy Patterson
- Samantha Schmidt
- Sarah Gardner, President, Birchwood Neighborhood Association

Exhibits:

At the open record hearing, the following exhibits were admitted in the record:

- Exhibit 1 Planning and Community Development Department Staff Report, including the following attachments:
 - A. Land Use Applications, including:
 - 1. Application Narrative and Decision Criteria Responses
 - 2. Site and Building Plans
 - 3. Preliminary Plat Map
 - B. Birchwood Neighborhood Zoning Map, Table and Area 1 description
 - C. Notices, including:
 - 1. Notice of Application
 - 2. Affidavit of Posting
 - 3. Notice of Hybrid Public Hearing

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4. Affidavit of Posting

D. SEPA Threshold Determination (SEP2024-0006), dated September 11, 2024

E. Coal Mine Hazard Evaluation, Sound Geology LLC, dated April 10, 2024

F. Public Comment:

- 1. Letter from Heather L. Richendrfer, dated June 11, 2024
- 2. Letter from Hayden Richardson, Whatcom Transportation Authority, dated June 4, 2024
- 3. Email from Kristy Hendrickson, dated June 5, 2024
- 4. Letter from JoAnn Padgett, dated May 31, 2024
- 5. Letter from Mary Lou White, dated August 8, 2024
- 6. Letter from Mary Lou White, Andrew Bowman, Ed and Bunny Hanson, Tom and Carol Gallaher, Nancy Coot, Alexndra Lihou, and Salley Jo Brown, with petition, dated July 15, 2024
- 7. Email from Dionne Peterson, dated September 17, 2024
- 8. Email from William Glazier, dated September 17, 2024

Exhibit 2 Public comments received after issuance of Staff Report, including:

- A. Letter from JoAnn Padgett, received September 25, 2024
- B. Emails from Mary Lou White, dated September 20-24, 2024
- C. Email from Mike Heintz, dated September 25, 2024
- D. Email from Kristina Heintz, dated September 25, 2024
- E. Email from Sarah Joy Day, dated September 25, 2024
- F. Email from Heather Richendrfer, with attached photos and letter, dated September 25, 2024

Exhibit 3 Email from Dylan Casper, Transportation Planner, City of Bellingham, with Multimodal Transportation Concurrency Certificate

Exhibit 4 Post-hearing public comment, including email from Joel Kronenberg dated September 28, 2024, and email from Kristina Heintz dated September 27, 2024, and the following documents submitted by Mary Lou White (referenced during hearing testimony):

- A. Article: Biodiversity and Health in the Urban Environment

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- B. Article: Urban Green Space and Its Impact on Human Health
- C. Article: Environmental and Human Microbiome for Health
- D. Report by the Comptroller General of the United States: Alternatives to Protect Property Owners from Damages Caused by Mine Subsidence
- E. Excerpt from Whatcom Talk article
- F. RCW 7.48.120 (Nuisance defined)/Article 12 of Universal Declaration of Human Rights
- G. [Same document as 4.F]
- H. State of Washington Constitution
- I. Crime rates map
- J. Applicant Narrative (Exhibit 1.A.1)
- K. Staff Report with highlighting
- L. SEPA Checklist
- M. Site Plan, dated May 4, 2021
- N. [Same document as 4.E]
- O. Memorandum from Kurt Nabbefeld to Bellingham City Council, dated February 10, 2020
- P. Land Use Chapter, Bellingham Comprehensive Plan (2016)

Exhibit 5 City of Bellingham Response to Public Comment, dated October 1, 2024
 Exhibit 6 Applicant Response to Public Comment, dated October 1, 2024

After considering the admitted testimony and exhibits, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Ali Taysi, AVT Consulting LLC, on behalf of Kulshan Community Land Trust (Applicant), requested approval of a conditional use permit (CUP) to operate the existing City Sprouts Farm as an agricultural nursery at 2912 Birchwood Avenue, Bellingham, Washington.¹ The Applicant requested the CUP in conjunction with a proposal to subdivide the land and develop an Incentive

¹ The subject property is known as Assessor's parcel number 380223 562531 0000. *Exhibit 1.*

1 Program for Innovative Affordable Homeownership project, which was
2 addressed in a separate decision. *Exhibits 1.A, 1.A1, and 1.A2.*

- 3 2. The subject property is within Area 1 of the Birchwood Neighborhood and has
4 a zoning designation of Residential Single, Detached, Mixed, with a minimum
5 detached lot size of 20,000 square feet. Pursuant to Bellingham Municipal
6 Code (BMC) 20.00.020, “the mixed designation is intended to allow agriculture
7 and the raising of farm animals; provided, that they are not a commercial
8 endeavor.” *Exhibits 1 and 1.B.* The Comprehensive Plan designation of the
9 property is Single Family Residential, Low Density. *Exhibit 1.*
- 10 3. “Nursery, agricultural” is defined as “an establishment where trees, shrubs,
11 vines and other plant stock are grown, propagated, and/or stored for the purpose
12 of sale or wholesale.” *BMC 20.08.020.* Such nurseries are allowed in
13 Residential Single zones with approval of a conditional use permit. The only
14 special requirement applicable to the use is that at least 50% of the total site
15 area must be devoted to growing and/or propagation. *BMC 20.16.020.J(2).*
- 16 4. The subject property is 2.79 acres in area and is developed with two buildings,
17 four temporary greenhouses, and some sheds. *Exhibits 1 and 1.A2.*
- 18 5. The City Sprouts Farm currently operates an agricultural nursery on
19 approximately one acre in the northwest portion of the site, and the Applicant
20 intends to retain the use after development of the proposed Incentive Program
21 housing. The farm would not operate in its own tract but within the northern
22 portions of Lots 1, 3, and 5 of the subdivision, which would range from 0.25 to
23 0.35 acres in area (substantially larger than needed for the dwelling units
24 proposed). The Applicant would retain ownership of all of the lots. *Exhibits 1,
25 1.A2, and 1.A3; Testimony of Ali Taysi and Ellie Duncan.*
- 26 6. City Sprouts Farm has operated on-site in its current form since 2018 and has
27 been a program of Western Washington University’s Center for Community
28 Learning since 2023. Fruits, vegetables, and flowers are grown on-site as part
29 of the program. The goals of the program include growing nutritious produce
30 that is accessible for food-insecure members of the community, cultivating soil
health and biodiversity, and creating opportunities for student learning,
engagement, and belonging. Farm produce is not sold directly from the site to
consumers but is distributed through other community organizations on a free
or low-cost basis. No on-site retail activity is proposed in conjunction with the
instant CUP application. *Exhibit 1.A.1.*

- 1 7. City Staff submitted that City Sprouts Farm falls within the zoning ordinance’s
2 definition of agricultural nursery. Consistent with BMC 20.16.020.J(2), at least
3 half of the portion of the site designated for farm use would be devoted to
4 growing produce. *Exhibit 1.*
- 5 8. Surrounding properties are within the same zoning designation of the subject
6 property and are developed with single-family residences and a non-conforming
7 multifamily residential use. The single-family residences are on lots ranging
8 from approximately 7,200 to 41,000 square feet in area. The Birchwood
9 Neighborhood Plan recognizes that the larger lots that are typical of the
10 neighborhood provide a rural atmosphere.² Birchwood Elementary School is
11 approximately one block east of the subject property. *Exhibits 1 and 1.A2.*
- 12 9. The farm operation does not use large equipment. A small, two-wheeled, walk-
13 behind tractor that runs on biodiesel fuel is used. *Ellie Duncan Testimony.*
- 14 10. No pesticides or chemical fertilizers are used in the farm operation. *Ellie*
15 *Duncan Testimony.*
- 16 11. The farm is staffed by five to seven students at a time during daytime hours,
17 typically three days per week, on a seasonal basis (April to October). The
18 proposed hours of operation are 9:00 a.m. to 4:00 p.m., although daily hours are
19 shorter at the beginning and end of the growing season. *Testimony of Ellie*
20 *Duncan and Kathy Bell; Exhibit 1.A1.*
- 21 12. It is unclear from the record what structure(s) would be associated with the use.
22 The Applicant testified that all existing structures would be removed from the
23 site, but the site plan depicts that two of the temporary greenhouses would be
24 relocated and appears to depict that two other temporary greenhouses and two
25 sheds would be retained in their current locations. The permitting status of
26 these structures (if not exempt) is unclear. However, Planning Staff noted that
27 replacement of the structures may require building and/or fire permits.
28 Pursuant to BMC 20.30.040.C, uses are limited to “one main building on a lot;”
29 however, the Hearing Examiner “is authorized to approve additional main
30 buildings for those conditional uses which the hearing examiner finds by their
nature to function efficiently and appropriately in more than one main
building.” *BMC 20.30.040.C.* Planning Staff requested that the Hearing
Examiner “allow this use to have more than one primary building as it is
apparent that the site is currently benefitting from the use of more than

² <https://cob.org/wp-content/uploads/birchwood.pdf>.

1 greenhouse and storage sheds.” *Exhibit 1, page 22*. No new buildings are
2 proposed or considered in the instant decision. *Exhibit 1.A2*.

3 13. Once development of the site is complete, access to the farm and the new
4 dwelling units would be from Birchwood Avenue via a private lane. *Exhibits*
5 *1.A1 and 1.A2*.

6 14. As part of the related Incentive Program affordable housing proposal, the
7 Applicant proposes to provide 27 parking spaces on-site for the residential use,
8 which is the minimum required by code for the number of dwelling units
9 proposed. The 27 stalls are also proposed to be the minimum sizes allowed by
10 code. The parking spaces would be within common parking areas along the
11 east and west sides of the private access lane. The proposal does not include
12 separate parking for City Sprouts Farm, because the number of employees and
13 volunteers present at any one time would not exceed seven, and the daytime
14 parking demand for the Farm use is not expected to coincide with peak parking
15 demand for the residential use. The proposal includes no load/unload parking
16 for moving equipment onto the site for use or produce off of the site for
17 distribution and no farm-specific parking. Although at the hearing the
18 Applicant indicated that the intent was to assign parking stalls to specific
19 residents, Planning Staff recommended that parking not be assigned so that
20 farm employees/volunteers have access to the parking spaces. Staff submitted
21 that if the parking turns out to be inadequate for the residential and farm use
22 together, the Applicant can request a minor modification of the CUP to place
23 parking within the farm area. *Exhibits 1 and 1.A.2; Testimony of Kathy Bell*
24 *and Michele Philhower*. Neighbor testimony was presented at the hearing that
25 it is typical for there to be five to seven cars parked on-site associated with the
26 farm use. *Heather Richendrfer Testimony*.

27 15. No new public facility or utility needs were identified for the farm use. The
28 farm is already served by an irrigation meter. *Exhibits 1 and 1.A1*.

29 16. The City Public Works Department issued a Multimodal Transportation
30 Concurrency Certificate for the residential project on January 30, 2024. Public
Works subsequently determined that the traffic generated by the farm use
would not negatively impact the transportation network, such that no update to
the concurrency determination is needed. *Exhibit 3; Kathy Bell Testimony*.

17. The subject property is mapped as a geologic hazard, as it (along with the
surrounding neighborhood) is above the historic Bellingham No. 1 coal mine.
The mine hazard is the only designated critical area on the subject property; the

1 subject property is relatively flat and does not contain or abut any wetlands,
2 streams, shorelines, or steep slopes. *Exhibits 1, 1.A1, 1.A2, and 1.E.*

3 18. The Applicant submitted a site-specific coal mine hazard evaluation of the
4 property, which was prepared by a licensed engineering geologist. The
5 conclusion of the report was that the risk of mine-related subsidence is low, and
6 that development of the site as proposed is feasible due to the low risk to
7 property and human life. The nearest area of documented subsidence causing
8 damage to homes is three-fourths of a mile from the subject property. *Exhibit*
9 *1.E.*

10 19. Several goals and policies of the Comprehensive Plan support the City Sprouts
11 Farm use, including Goal LU-10 (to “foster community connectedness to
12 improve the health of residents”), Policy LU-81 (to “increase access to healthy
13 food for all Bellingham residents by encouraging...small-scale urban farms”),
14 Policy LU-84 (to “encourage healthy food purveyors...to be located near
15 residential areas”), and Policy ED-51 (to “encourage locally-based food
16 production...”). *Exhibit 1.A1.*

17 20. The CUP application was submitted on April 24, 2024, and the City issued a
18 notice of application for the CUP and the associated preliminary plat/incentive
19 program project on May 28, 2024. The notice of application was posted on-site
20 on June 3, 2024. *Exhibits 1 (page 4), 1.C1; and 1.C2.*

21 21. The City of Bellingham Planning and Community Development Department
22 acted as lead agency for review of the environmental impacts of the proposal
23 (including the subdivision/incentive program components) under the State
24 Environmental Policy Act (SEPA). After review of the environmental
25 checklist, coal mine hazard evaluation, stormwater site plan, soil infiltration
26 evaluation, Phase 1 environmental site assessment, and Department of
27 Archaeology and Historic Preservation correspondence, the City issued a
28 Determination of Non-Significance (DNS) for the project on September 11,
29 2024.³ *Exhibit 1.D.*

30 22. The City issued a notice of hybrid public hearing on September 11, 2024.
Exhibits 1 and 1.C3.

³ The City’s SEPA procedures do not provide for an administrative appeal of the DNS. *Exhibit 1.D;*
BMC 16.20.210. Consequently, a letter submitted by an interested party purporting to appeal the DNS
was not entered into the record for this decision. *Exhibit 5.*

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- 23. Most of the public comment submitted during project review and at the open record hearing related to the subdivision and Incentive Program applications. Comment on the CUP included concerns regarding parking, with requests that additional parking be provided (i.e., parking in addition to the parking provided for the residential use), and that the number of persons on-site be limited consistent with the parking. Concern was also expressed that approval of the CUP would set a precedent for other commercial uses of the site and would increase traffic to the site. *Exhibits 1.F and 4.* Planning Staff and Applicant representatives responded in writing to the comment submitted at hearing in written post-hearing submittals consistent with the schedule established on the record at hearing. *Exhibits 5 and 6.*
- 24. Having considered all testimony and written comment, as well as the complete application materials, Planning Staff maintained their recommendation for approval of the CUP subject to the conditions in the Staff Report. *Exhibits 1 and 5; Kathy Bell Testimony.* The Applicant waived objection to the recommended conditions. *Ali Taysi Testimony; Exhibit 6.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner shall approve a conditional use permit for an application after determining the applicable decision criteria pursuant to BMC 20.16.010.B(1-3) and 20.16.010.E are met. Additionally, the Hearing Examiner must find that the proposed use will satisfy any listed special requirement pursuant to BMC 20.16.020.

Criteria for Review:

Conditional Use Permit

Pursuant to BMC 20.16.010.B, conditional use permits for conditional uses allowed in the general use type may be granted by the hearing examiner if the record demonstrates the following:

- 1. The proposed use will promote the health, safety, and general welfare of the community.
- 2. The proposed use will satisfy the purpose and intent of the general use type in which it is located.
- 3. The proposed use will not be detrimental to the surrounding neighborhood.

1 Pursuant to BMC 20.16.010.C, in applying the standards set forth in subsection B
2 (above), the hearing examiner shall consider the following factors as to whether the
3 proposed use will:

- 4 1. Be harmonious with the general policies and specific objectives of the
5 comprehensive plan.
- 6 2. Enable the continued orderly and reasonable use of adjacent properties by
7 providing a means for expansion of public roads, utilities, and services.
- 8 3. Be designed to be compatible with the essential character of the
9 neighborhood.
- 10 4. Be adequately served by public facilities and utilities including drainage
11 provisions.
- 12 5. Not create excessive vehicular congestion on neighborhood collector or
13 residential access streets.
- 14 6. Not create a hazard to life, limb, or property resulting from the proposed
15 use, or by the structures used therefore, or by the inaccessibility of the
16 property or structures thereon.
- 17 7. Not create influences substantially detrimental to neighboring uses.
18 "Influences" shall include, but not necessarily be limited to noise, odor,
19 smoke, light, electrical interference, and/or mechanical vibrations.
- 20 8. Not result in the destruction, loss, or damage to any natural, scenic, or
21 historic feature of major consequence.

22 **Conclusions Based on Findings:**

- 23 1. As conditioned, official authorization of the ongoing Farm use would promote
24 the health, safety, and general welfare of the community. The use provides
25 healthful food on a no/low cost basis to the community, without pesticide use
26 and using only smaller items of equipment. The conditions of approval prohibit
27 on-site retail sales and require building permits for installation of greenhouses,
28 if needed. *Findings 6, 9, 10, 12, 23, and 24.*
- 29 2. As conditioned, the use would satisfy the purpose and intent of the general use
30 type in which it is located. Agricultural use is consistent with the "mixed"
designations, and the conditions of approval - which prohibit retail activity -
would ensure that the performance characteristics of the use would be
compatible with the residential neighborhood. *Findings 2, 6, 8, and 24.*
3. As conditioned, the use would not be detrimental to the surrounding
neighborhood. Because the CUP is being developed in conjunction with a

1 separate subdivision through which all parking is proposed, the ultimate
2 outcome of which it is not possible to know at the time of CUP decision
3 issuance, and because the parking proposed for the residential use is the
4 minimum numbers and sizes of stalls allowed under Code, and because there are
5 already complaints of parking on Birchwood without the residential use, it is
6 necessary that the agricultural nursery provide its own parking within the Farm
7 portion of the site. A condition of approval has been added to require the
8 number of stalls and any load/unload parking areas consistent with the use in the
9 underlying zone to be added to the site plan within the Farm portion of the site
10 separate from the parking for the residential use. Restricting the hours of
11 operation and number of personnel on-site would ensure that the scale of use
12 remains consistent with the application and help ensure that parking is adequate.
13 *Findings 11, 14, 23, and 24.*

14 4. The use would be harmonious with the general policies and specific objectives
15 of the comprehensive plan, which include supporting small-scale urban farms.
16 *Finding 19.*

17 5. Due to the nature of the use and the lack of new permanent structures, the use
18 would not prevent the extension of roads or utilities to adjacent properties if
19 needed. *Findings 3, 6, and 11.*

20 6. As conditioned, the use would be compatible with the essential character of the
21 neighborhood. *Findings 6, 8, 23, and 24.*

22 7. The use would be adequately served by public facilities and utilities. *Findings*
23 *13, 15, and 16.*

24 8. With a condition limiting the number of personnel on-site and prohibiting retail
25 activity, the use would not create excessive vehicular congestion on
26 neighborhood collector or residential access streets. *Findings 11 and 16.*

27 9. The use would not create a hazard to life, limb, or property. *Findings 17*
28 *and 18.*

29 10. The use would not create influences substantially detrimental to neighboring
30 uses. *Findings 9 and 10.*

11. The use would not result in the destruction, loss, or damage to any natural,
scenic, or historic feature of major consequence. No such features were
identified during the review process. The use is an existing use with minimal

1 infrastructure requirements. No new permanent buildings are proposed or
2 allowed in the instant decision. *Findings 5, 6, 12, 15, and 17.*

3
4 **DECISION**

5 Based on the preceding findings and conclusions, the request for a conditional use
6 permit to operate an agricultural nursery at 2912 Birchwood Avenue is **APPROVED**
subject to the following conditions.

- 7 1. The agricultural nursery shall be limited in operation as described in Exhibit
8 1.A1, including the following:
- 9 a. Hours of operation are generally limited to 9:00 am to 4:00 pm, with
10 allowance for occasional working hours outside of these time parameters.
 - 11 b. There shall be no more than seven employees or volunteers on-site at any
12 one time. This does not prohibit intermittent site visits or tours by students
13 or other affiliated organizations.
- 14 2. Any relocation of on-site structures and any replacement or new structures
15 associated with the Farm use must undergo appropriate permit reviews as
16 applicable. Building permit applications, as required, for the installation of
greenhouse structures shall be obtained.
- 17 3. On-site retail sale of any material grown on the site is prohibited unless a
18 modification to this decision is approved compliant with code. This prohibition
19 does not include donation pick up or other similar low intensity distribution of
20 produce from the site.
- 21 4. Modifications may be requested pursuant to Chapter 20.16 BMC.
- 22 5. All Farm parking must be accommodated on the farm portion of the site. The
23 appropriate number of parking stalls based on seven maximum employees and
24 any required load/unload parking area required in the underlying zone for
25 agricultural nursery uses shall be added to the farm portion of the site, separate
26 from the residential parking. This requires submittal of a revised site plan.

27 DECIDED November 4, 2024.

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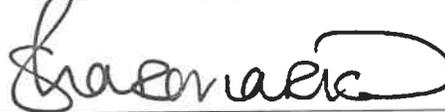
30 *Findings, Conclusions, and Decision*
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H:/DATA/HEARING EXAMINER/DECISIONS/KCLT 2912 Birchwood Ave. CUP Decision

OFFICE OF THE HEARING EXAMINER
CITY OF BELLINGHAM
210 LOTTIE STREET
BELLINGHAM, WA 98225
(360) 778-8399

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BELLINGHAM HEARING EXAMINER



Sharon A. Rice

Findings, Conclusions, and Decision

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OFFICE OF THE HEARING EXAMINER

CITY OF BELLINGHAM

210 LOTTIE STREET

BELLINGHAM, WA 98225

(360) 778-8399