

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

**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
2912 Birchwood Avenue	
LaFreniere Court Housing/ SUB2024-0006	SHARON A. RICE HEARING EXAMINER

SUMMARY OF DECISION

The request for a nine-lot subdivision to be developed at 2912 Birchwood Avenue as an Incentive Program for Innovative Affordable Homeownership project is **APPROVED** subject to conditions. The associated conditional use permit request is addressed in a separate decision.

SUMMARY OF RECORD

Request:

Ali Taysi, AVT Consulting LLC, on behalf of Kulshan Community Land Trust (KCLT, Applicant), requested approval of a land division to subdivide 2.79 acres into nine single-family residential lots that would be developed as a project under the Incentive Program for Innovative Affordable Homeownership pursuant to Bellingham Municipal Code Chapter 20.29. The subject property is located at 2912 Birchwood Avenue in Bellingham, Washington.

Hearing Date:

The Bellingham Hearing Examiner conducted a hybrid open record hearing on the request, along with a related conditional use permit request to operate an agricultural nursery on a portion of the subdivision land, on September 25, 2024. The record was

1 held open two business days to allow for post-hearing written public comment, with
2 additional days for responses by the parties. Post-hearing comments and responses
3 were timely submitted, and the record closed on October 1, 2024. No in-person site
4 visit was conducted, but the Examiner viewed the subject property and its surroundings
5 on Google Maps.

5 **Testimony:**

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

7 Kathy Bell, Senior Planner

8 Ali Taysi, AVT Consulting LLC, Applicant's Representative

9 Michele Philhower, Finance and Operations Manager, KCLT

10 Dan Welch, Project Architect

11 Ellie Duncan, Farm Manager, City Sprouts Farm

12 JoAnn Padgett

13 Heather Richendrfer

14 Mary Lou White

15 Louise Bjornson

16 Travis Tennessen

17 Joy Patterson

18 Samantha Schmidt

19 Sarah Gardner, President, Birchwood Neighborhood Association

20 **Exhibits:**

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

22
23 Exhibit 1 Planning and Community Development Department Staff Report including
24 the following Attachments:

25 A. Land Use Applications, including:

26 1. Application Narrative and Decision Criteria Responses

27 2. Site and Building Plans

28 3. Preliminary Plat Map

29 B. Birchwood Neighborhood Zoning Map, Table and Area 1 description

30 *Findings, Conclusions, and Decision*

page 2 of 32

H:/DATA/HEARING EXAMINER/DECISIONS/KCLT 2912 Birchwood Ave. SUB Decision

OFFICE OF THE HEARING EXAMINER

CITY OF BELLINGHAM

210 LOTTIE STREET

BELLINGHAM, WA 98225

(360) 778-8399

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

C. Notices, including:

- 1. Notice of Application
- 2. Affidavit of Posting
- 3. Notice of Hybrid Public Hearing
- 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

- 1 Exhibit 3 Email from Dylan Casper, Transportation Planner, City of Bellingham, with
- 2 Multimodal Transportation Concurrency Certificate
- 3 Exhibit 4 Post-hearing public comment, including email from Joel Kronenberg dated
- 4 September 28, 2024, and email from Kristina Heintz dated September 27,
- 5 2024, and the following documents submitted by Mary Lou White
- 6 (referenced during hearing testimony):
- 7 A. Article: Biodiversity and Health in the Urban Environment
- 8 B. Article: Urban Green Space and Its Impact on Human Health
- 9 C. Article: Environmental and Human Microbiome for Health
- 10 D. Report by the Comptroller General of the United States: Alternatives to
- 11 Protect Property Owners from Damages Caused by Mine Subsidence
- 12 E. Excerpt from Whatcom Talk article
- 13 F. RCW 7.48.120 (Nuisance defined)/Article 12 of Universal Declaration
- 14 of Human Rights
- 15 G. [Same document as 4.F]
- 16 H. State of Washington Constitution
- 17 I. Crime rates map
- 18 J. Applicant Narrative (Exhibit 1.A1)
- 19 K. Staff Report with highlighting
- 20 L. SEPA Checklist
- 21 M. Site Plan, dated May 4, 2021
- 22 N. [Same document as 4.E]
- 23 O. Memorandum from Kurt Nabbefeld to Bellingham City Council, dated
- 24 February 10, 2020
- 25 P. Land Use Chapter, Bellingham Comprehensive Plan (2016)
- 26 Exhibit 5 City of Bellingham Response to Public Comment, dated October 1, 2024
- 27 Exhibit 6 Applicant Response to Public Comment, dated October 1, 2024

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

FINDINGS

1. Ali Taysi, AVT Consulting LLC, on behalf of Kulshan Community Land Trust (Applicant), requested approval of a preliminary plat to subdivide 2.79 acres into nine single-family residential lots that would be developed as a project under the Incentive Program for Innovative Affordable Homeownership established in Bellingham Municipal Code (BMC) Chapter 20.29. The subject property is located at 2912 Birchwood Avenue in Bellingham, Washington.¹ *Exhibits 1, 1.A, 1.A1, 1.A2, and 1.A3.*
2. The subject property is 2.79 acres in area and is developed with two buildings, four temporary greenhouses, and some sheds. The existing structures would be removed. *Exhibit 1.A2; Ali Taysi Testimony.* The City Sprouts Farm operates an agricultural nursery in the northwestern portion of the site, and the Applicant intends to retain the use. Because an agricultural nursery is a conditional use in the zone, as opposed to a use that is allowed outright, and because a conditional use permit has never been issued for City Sprouts Farm’s use of the site, the Applicant is seeking conditional use permit approval in conjunction with the requested preliminary plat.² The farm would not operate in its own tract but within the northern portions of Lots 1, 3, and 5, which would range from 0.25 to 0.35 acre in area (substantially larger than needed for the dwelling units proposed). *Exhibits 1, 1.A2, and 1.A3; Ali Taysi Testimony.*
3. The subject property is within Area 1 of the Birchwood Neighborhood and has a zoning designation of Residential Single, Detached, Mixed, with a minimum detached lot size of 20,000 square feet. Pursuant to BMC 20.00.020, “the mixed designation is intended to allow agriculture and the raising of farm animals; provided, that they are not a commercial endeavor.” *Exhibits 1 and 1.B.* Because the subject property’s zoning lacks a “cluster” designation, infill housing types (which include townhouses) are not allowed outright in the zone. *BMC 20.30.030.A.* However, the Applicant proposes to develop the site consistent with the Incentive Program for Innovative Affordable Homeownership (BMC 20.29), which allows modification of density, lot size, setback, and other standards. *BMC 20.29.030.F.* City Planning Staff submitted that attached housing types are allowed in incentive program projects. *Exhibit 1, page 5; Kathy Bell Testimony; BMC 20.29.030.F.*

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

² The conditional use permit is addressed in a separate decision document.

- 1 4. The Comprehensive Plan designation of the property is Single Family
2 Residential, Low Density. *Exhibit 1.*
- 3 5. Surrounding properties share the subject property's zoning designation and are
4 developed with single-family residences and a non-conforming multi-family
5 residential use. The single-family residences are on lots ranging from
6 approximately 7,200 to 41,000 square feet in area. Birchwood Elementary
7 School is approximately one block east of the subject property. *Exhibits 1 and*
8 *1.A2.*
- 9 6. The subject property is mapped as a geologic hazard area as it (along with the
10 surrounding neighborhood) is above the historic Bellingham No. 1 coal mine.
11 The mine hazard is the only designated critical area on the subject property; the
12 subject property is relatively flat and does not contain or abut any wetlands,
13 streams, shorelines, or steep slopes. *Exhibits 1, 1.A1, 1.A2, and 1.E.*
- 14 7. The Applicant submitted a site-specific coal mine hazard evaluation of the
15 property, which was prepared by a licensed engineering geologist. The
16 conclusion of the report was that the risk of mine-related subsidence is low, and
17 that development of the site as proposed is feasible due to the low risk to
18 property and human life. The nearest area of documented subsidence causing
19 damage to homes is three-fourths of a mile from the subject property. *Exhibit*
20 *1.E.* However, due to the critical area designation a critical area permit would
21 be required prior to issuance of construction permits. The critical area permit
22 application has been submitted but a decision has not yet been issued. *Exhibit*
23 *1; Kathy Bell Testimony.*
- 24 8. The proposed nine lots would range from 3,338 to 31,617 square feet in area.
25 No tracts are proposed; all of the infrastructure serving the site (access lane,
26 parking, stormwater facilities), the farm in the northwest portion of the site, and
27 open space in the northeast portion of the site would be within the lots. *Ali*
28 *Taysi Testimony; Exhibit 1.A3.*
- 29 9. Each of the nine lots would be developed with one primary dwelling unit and
30 one accessory dwelling unit (ADU), for a total of 18 dwelling units. The
Applicant would own all nine lots and sell the 18 units as condominium units.

1 The City has reviewed and is prepared to issue the Applicant's ADU permit
2 applications.³ *Testimony of Ali Taysi and Kathy Bell; Exhibit 1.A2.*

3 10. Although the proposed density of nine dwelling units (ADUs do not count
4 towards density) and proposed lot sizes do not comply with the standards of the
5 Residential Single designation, the Applicant proposes modification of these
6 standards pursuant to BMC 20.29. 030.F(1) and .F(2), as described in the
7 findings below that are specific to the incentive program. *Exhibits 1 and 1.A1.*

8 11. Sixteen of the 18 dwelling units would be arranged into four-plex, townhouse-
9 style buildings, with each building containing two primary dwelling units
10 (1,280 square feet each) and two slightly smaller ADUs (960 square feet each).
11 Each of the four-plex buildings would be two stories tall. The total floor area
12 of each building would be 4,480 square feet, which is less than the maximum
13 floor area allowed for a detached single-family residence without conditional
14 use permit approval. Each building would have a footprint of 2,240 square feet,
15 not including porches. Two of the dwelling units – the primary unit and ADU
16 on proposed Lot 5 – would be one-story, 992 square foot, ADA-accessible
17 units. *Exhibits 1.A2 (see sheets SP4 and A3.4) and 1.A3; Dan Welch*
18 *Testimony.*

19 12. All of the dwelling units would be clustered in the central portion of the site (as
20 measured from south to north), with the southern portion of the site containing
21 the access from Birchwood Avenue, the northwest portion of the site containing
22 City Sprouts Farm, and the northeast portion of the site containing undeveloped
23 open space within which existing trees would be retained. The residential
24 buildings would all have covered front and rear porches, with the front porches
25 facing a central pedestrian corridor and connected to the corridor via gravel
26 walkways. *Exhibit 1.A2 (see sheets SP4 and A3.4).*

27 13. The proposed lots would comply with the open space standard of the
28 Residential Single zone. Each lot would have open space exceeding 30% of the
29 total area. *Exhibits 1 and 1.A2.*

30 ³ ADU applications are reviewed through an administrative Type 1 process. Because in this case the
ADU applications were not consolidated with the Type III applications presently before the Hearing
Examiner, Staff would issue a separate decision on the ADU applications. *Exhibit 1; Kathy Bell*
Testimony.

- 1 14. The two-story dwelling units, which are the tallest structures proposed, would
2 be 23 feet, three inches in height as measured under the City's Height
3 Definition No. 1 (BMC 20.08.020). The maximum building height under
4 Definition No. 1 is 35 feet. *BMC 20.30.040.E; Exhibits 1 and 1.A2.*
- 5 15. Other than the reduced side setbacks for attaching the dwelling units, as
6 described below in the findings specific to the incentive program, the proposed
7 dwelling units would meet or exceed all applicable building setbacks. Further,
8 no unit would be closer than 10 feet from a property line that is external to the
9 project. The distance between the units on Lots 2, 4, 7, and 9 and the property
10 lines shared with adjacent off-site properties to the south would be
11 approximately 25 feet. The distance between the units on Lots 1 and 2 and the
12 property lines shared with adjacent off-site parcels to the west would be
13 approximately 15 feet, and a row of trees would be planted in that setback. The
14 distance between the units on Lots 8 and 9 and the property lines shared with
15 adjacent off-site parcels to the east would be approximately 10 feet, with four
16 trees planted in that setback. The land to the north of the units (for a distance
17 ranging from approximately 190 to 200 feet to the north property line) would be
18 used for Farm or open space purposes. *Exhibits 1, 1.A2, and 6; BMC*
19 *20.30.040.*
- 20 16. Access to the units would be from Birchwood Avenue via a private lane. As
21 proposed (see Sheet SP2 of Exhibit 1.A2), the lane would have a 14-foot wide
22 driving surface and four-foot wide pedestrian walkways on each side, for a total
23 width of 22 feet.⁴ Because BMC Table 23.08.060.B provides for a total
24 driveway width of 20 feet, and because a narrower driveway would have a
25 traffic calming effect, Planning Staff recommended a condition of approval that
26 the lane not exceed 20 feet in width including walkways. Of note, this proposal
27 would generate traffic from more than the eight lots contemplated in that table.
28 Additional parking dimensional requirements are established in BMC
29 20.08.020 Figures 10 and 11, which appear to show that for parking lots, the
30 minimum drive aisle width for two-way traffic for 90-degree parking spaces is
22 feet, which may be reduced to 20 feet only if the spaces are longer than
required. Additional single-family residential parking standards (which assume
parking will be in a driveway) require 22 feet of maneuvering space. *BMC*

⁴ Sheet A1.1 of the same exhibit packet shows a walkway only on the west side of the lane. The Staff Report contains an analysis of this (see page 11), recommending that the proposal be revised to include a walkway on the east side as well. It appears that Sheet SP2 depicts this requested revision. *Exhibits 1 and 1.A2.*

1 20.30.060.C(1). Together, these standards strongly imply that having a 22-foot-
2 wide drive aisle is required. In this case, where the drive aisle includes two
3 four-foot-wide pedestrian walkways and vehicles traveling in opposite
4 directions won't be able to pass without driving in the pedestrian paths, the two
5 additional feet of drive aisle width seem necessary. Consistent with the
6 recommendation of the Fire Department, a turn-around would be provided on
7 the west side of the lane near the units on Lot 5. Staff did not request a street
8 connection to any adjacent properties, as each has alternative access; none is
9 proposed. *Exhibits 1 and 1.A2; Kathy Bell Testimony.*

10 17. The Residential Single development regulations require one street tree for every
11 50 feet of street frontage. In this case, a draft landscape plan has been
12 submitted that depicts the required street trees along Birchwood Avenue. City
13 Staff recommended that the same standard be applied to the internal private
14 driveway, as it is the primary vehicular and pedestrian access to the site.
15 *Exhibits 1 and 1.A2.*

16 18. As Birchwood Avenue is not improved to the City's three-quarter standard for a
17 residential street, additional improvements would be required, including a curb,
18 gutter, and sidewalk. At present, there is an at-grade sidewalk along the
19 property frontage. The required improvements would create a more distinct
20 street frontage, with the sidewalk behind a curb, which would prevent parking
21 on the north side of Birchwood in the area of the improvements. *Exhibit 1;*
22 *Kathy Bell Testimony; Google Maps site view.*

23 19. The City Public Works Department issued a Multimodal Transportation
24 Concurrency Certificate for the project on January 30, 2024. The traffic
25 impacts of the development would be mitigated through payment of impact
26 fees, which would be paid at building permit issuance. The estimated fee
27 amount is \$35,410.96. *Exhibit 3.*

28 20. None of the units would have their own garages or driveways. Instead,
29 common parking areas would be provided on the east and west sides of the
30 private lane. Two parking spaces are required for each primary dwelling unit,
and one parking space is required for each ADU, for a total of 27 spaces. The
submitted site plan (see Sheet SP2 of Exhibit 1.A2) depicts 27 parking spaces.⁵
Although the site plan depicts a "temporary overflow staging" parking area near

⁵ Please note that Sheet A1.1 of the same exhibit packet does not demonstrate compliance with the parking standard, as it shows only 26 parking spaces.

1 the site entrance, this area would be restored after construction is complete.
2 The Applicant does not intend to provide separate parking for City Sprouts
3 Farm as the number of employees or volunteers present at any one time would
4 not exceed seven, and the daytime parking demand for the use would not
5 coincide with peak parking demand for the residential use. Although at the
6 hearing the Applicant indicated that the parking would be assigned to residents,
7 City Staff recommended that parking not be assigned so that farm
8 employees/volunteers have access to the parking spaces. Neighbor testimony
9 was presented at the hearing that it is typical for there to be five to seven cars
10 parked on site associated with the farm use. Staff submitted that if the parking
11 turns out to be inadequate for both uses, the Applicant can request a minor
12 modification of the CUP to place parking within the farm area. *Exhibits 1 and*
13 *1.A2; Testimony of Kathy Bell, Michele Philhower, and Heather Richendrfer.*

- 14
15 21. Stormwater runoff from the developed site would be managed consistent with
16 BMC requirements. Water quality treatment would be provided through
17 bioretention cells, which would be located along the private lane within a public
18 drainage easement. The treated runoff would be detained underground prior to
19 release into the municipal drainage system. *Exhibit 1.A2 (see Sheet SP2).*
- 20
21 22. Public water and sewer are available to the site in Birchwood Avenue and
22 would be extended through the site to serve the proposed residences. *Exhibits*
23 *1.A1 and 1.A2.*
- 24
25 23. Although Lot 7 would directly abut public infrastructure in Birchwood Avenue,
26 the remaining lots would abut public infrastructure via easement. The
27 recommended conditions of approval require the Applicant to submit easement
28 documents for City review and approval and record the easements concurrently
29 with the final plat. *Exhibits 1 and 1.A3.*
- 30
31 24. Development of the units and associated infrastructure would require removal
32 of 38 significant trees, most of which are cottonwoods. Ten significant trees
33 would be retained, most of which are clustered in the northeast corner of the
34 subject property. *Exhibits 1.A1 and 1.A2.*
- 35
36 25. The Applicant proposes to limit grading to that which is needed for the new
37 access road, utilities, and building foundations. Planning Staff's recommended
38 conditions of approval require the clearing and grading plan to be submitted for
39 Planning and Public Works Department review and approval concurrent with
40 the review of civil drawings. *Exhibits 1 and 1.A1.*

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
26. The transit stops nearest the subject property are located on Northwest Avenue and W Maplewood Avenue, approximately one-half mile from the subject property. The property is within Whatcom Transportation Authority’s paratransit service area. *Exhibits 1 and 1.F.*
27. The subject property is within the service area of Birchwood Elementary School, Shuksan Middle School, and Squalicum High School. Middle and high school students would be bussed to schools. Elementary students would access Birchwood Elementary, one block east of the subject property, via an existing at-grade walkway within Birchwood Avenue. *Exhibit 1; Google Maps Site View.*
28. There are two neighborhood parks within one-half mile of the subject property, one of which is accessible via a continuous network of pedestrian facilities. The nearest access to the Bay to Baker Trail is approximately 1,500 feet south of the subject property. *Exhibit 1.*
29. The City’s Parks, Recreation and Open Space Plan does not identify any public recreation facilities on the subject property. Consequently, no facilities need to be constructed for compliance with BMC 23.08.070.G. *Exhibit 1.*
30. The Birchwood Neighborhood Plan recognizes that the larger lots that are typical of the neighborhood provide a rural atmosphere.⁶ The Applicant submitted that the proposal, which clusters the dwelling units to preserve City Sprouts Farm and other open space, and which provides four-plex buildings that are single-family in scale, would be consistent with the neighborhood character. *Exhibits 1 and 1.A1.*
31. Planning Staff submitted that the following goals and policies of the Bellingham Comprehensive Plan are applicable to and would be furthered by the project:
- Land Use
GOAL LU-1 Support sense of place in neighborhoods.
Policy LU-1 The Single-Family Residential designation permits a range of housing densities to achieve the City's housing diversity and affordability goals. In undeveloped or infill areas, new

28
29

⁶ <https://cob.org/wp-content/uploads/birchwood.pdf>.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

housing may include single-family detached, single-family attached, townhouses, cottage housing, accessory dwelling units, clustered housing and other small-scale housing forms. Accessory, public and semi-public uses are also allowed.

Policy LU-4 Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.

Policy LU-5 Foster neighborhoods with a balanced mix of housing prices that are compatible with the wages and incomes in the community.

Policy LU-6 Support higher-density development with parks, art, schools and other public amenities.

Policy LU-10 To achieve a healthy mix of housing that is affordable to a wide range of incomes, implement and seek new, innovative tools, including, but not limited to:

- Density bonuses;
- Inclusionary zoning;
- Cluster subdivisions that preserve open space, retain natural features and provide other public benefits;
- The Infill Housing Toolkit, which includes small lot homes, townhomes and other housing forms;
- Accessory dwelling units;
- Adaptive reuse of existing buildings;
- Purchase and transfer of development rights (TDR) programs; and
- Public-private partnerships for shared parking facilities, wetland mitigation, and regional stormwater management.

GOAL LU-10 Foster community connectedness to improve the health of residents.

Policy LU-81 Increase access to healthy food for all Bellingham residents by encouraging and supporting healthy food retail, farmers markets, and small-scale urban farms (e.g. residential and community gardens).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Policy LU-82 Explore incentives and regulatory changes to encourage grocery stores, farmers markets, food carts and other mobile vendors to locate in underserved areas.

Policy LU-83 Encourage development patterns that support healthy, affordable food access.

Policy LU-84 Encourage healthy food purveyors, such as grocery stores, farmers markets and community food gardens, to be located near residential areas and public transit.

GOAL LU-5 Support the Growth Management Act's goal to encourage growth in urban areas.

Housing

Policy H-2 Encourage mixed housing types for new development on greenfield sites, a benefit of which is the integration of people from various socio-economic backgrounds.

Policy H-3 Encourage well-designed infill development on vacant or underutilized properties.

Policy H-13 Consider the impacts on Citywide housing capacity, affordability and diversity when making land use policy decisions and code amendments.

Policy H-14 Actively coordinate with public and private partners in efforts to meet regional housing needs.

Policy H-15 Support fair and equal access to housing for all persons, regardless of race, religion, ethnic origin, age, household composition or size, disability, marital status, sexual orientation or economic circumstances.

GOAL H-2 Foster housing that is safe, healthy, livable, and affordable for all income levels in all neighborhoods.

Policy H-16 Increase the supply of affordable rental and ownership housing that is context sensitive throughout the City, especially in areas with good access to transit, employment, education and services (see Land Use Chapter for definition of "context sensitive").

Policy H-17 Consider the impacts of transportation costs on housing affordability and accessibility of services and other opportunities when planning for housing.

1 Policy H-19 Continue providing incentives to support housing
2 affordability (e.g. density bonuses, expedited permitting,
3 multi-family tax exemption program and fee reductions) and
4 consider including workforce housing as part of certain
5 incentives programs.

6 Policy H-22 Support and expand low-income housing programs and public
7 funding (e.g. the Housing Levy and HUD entitlement funds).

8 Policy H-26 Support organizations that construct, manage and provide
9 services for affordable housing, including permanently
10 affordable housing.

11 Capital Facilities and Utilities

12 GOAL CF-8 Promote the delivery of adequate utilities and encourage the
13 design and siting of private utility facilities in a manner that
14 minimizes impacts on adjacent land uses and the
15 environment.

16 Policy CF-3 Encourage and support development in areas where adequate
17 public facilities and services exist or can be provided in an
18 efficient manner.

19 *Exhibit 1.*

20 *Findings Specific to Incentive Program Approval Requirements*

21 32. Applicant Kulshan Community Land Trust (KCLT) is the only organization
22 that has successfully developed affordable housing projects under the City's
23 incentive program. Specifically, the Applicant has experience in creating and
24 retaining owner-occupied, resale-restricted affordable housing, while managing
25 income qualification requirements for buyers. The Applicant is able to employ
26 restrictive resale covenants to ensure that units are only sold to qualified buyers
27 and is able to fulfill City's reporting requirements relating to the program.

28 *Exhibits 1 and 1.A1.*

29 33. The Applicant proposes that all 18 units be affordable, low-income, owner-
30 occupied units. City Planning Staff's recommended conditions of project
approval require the Applicant to obtain Planning and Community
Development Department Director approval of the controls used to ensure that
that units remain affordable and owner-occupied by a qualified purchaser,
which controls are required pursuant to BMC 20.29.030.B and .C. *Exhibits 1
and 1.A1.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

34. Consistent with BMC 20.29.030.D, the subject property is located within a residential single-family zone and is not within the Lake Whatcom watershed. *Exhibits 1 and 1.A1.*

35. The Applicant proposes site and building designs that are largely consistent with the criteria of BMC 20.29, in that covered front porches with a roofline at the first story would be provided for each unit, with the front porches occupying at least 30% of the building façade and facing a pedestrian corridor; the building elevations would have consistent trim details; swinging doors would provide access to the porches; and walkways would be provided from the front porches to the pedestrian corridor. No garages or fences are proposed. *Exhibits 1, 1.A1, and 1.A2.* As argued by City Planning Staff, the landscape plans do not demonstrate compliance with the requirements of BMC 20.29.030.E(10), and the building designs do not delineate the individuality of units as required by BMC 20.29.030.E(2). Staff recommended that these items be addressed through conditions of approval. *Exhibits 1 and 1.A2.* With respect to the requirement that front porches have no dimension narrower than five feet (BMC 20.29.030.E(5)), the Applicant formally requested modification of that requirement. *Exhibits 1 and 1.A1.*

36. BMC 20.29.030.F allows applicants for innovative affordable homeownership projects to request regulatory modification of certain enumerated requirements (density, lot size, etc.) as well as “other regulations to allow demonstration of innovative approaches to affordable homeownership, energy conservation, low-impact development, and stormwater management.” *BMC 20.29.030.F(2)(g).* The Applicant requested several modifications pursuant to this section, as detailed in the findings that follow. *Exhibit 1.A1.*

37. The Applicant requested a modification of the density standard applicable to development in the Birchwood Area 1/Residential, Single zone, as authorized by BMC 20.29.030.F.1. The ordinance allows the underlying maximum density to be increased by up to 50%. Accessory dwelling units do not count towards project density. In this case, the maximum number of primary dwelling units that could be developed on the site without the density incentive is six (121,532 square feet ÷ 20,000 square feet per dwelling unit = 6.08). A 50% density incentive yields a maximum of nine primary dwelling units, consistent with the number proposed. The density increase is needed for the project because it would allow project costs to be amortized over a greater number of dwelling units, which would allow the units to be affordable. Whereas the incentive program of BMC 20.29 only requires 51% of the units to

1 be affordable low-income units, the Applicant proposes that all proposed units
2 (including the ADUs) be affordable low-income units. *Exhibit 1.A1; Ali Taysi*
3 *Testimony; BMC 20.29.030.B.*

4 38. The Applicant requested a modification of the minimum site area requirement
5 of 20,000 square feet to create lots that would range in area from 3,338 to
6 31,617 square feet in area. All but two of the lots would be less than 20,000
7 square feet in area. The Applicant proposes the smaller lot sizes to reduce the
8 development footprint and the extent of utility extensions and paved surfaces,
9 while allowing preservation of the Farm and other open space, all of which
10 would promote affordability through reducing infrastructure costs. Although
11 the project is not proposed as a “cluster subdivision,” the minimum lot size
12 exceeds the minimum lot size specified for attached residential units of 2,000
13 square feet established in BMC 23.08.050. *Exhibits 1.A1 and 1.A3; BMC*
14 *23.08.050.A(3).*

15 39. The Applicant requested modification of two subdivision regulations: BMC
16 23.08.060.D, which establishes a building envelopment requirement of 60 feet
17 by 60 feet, and BMC 23.08.060.E(4), which limits the number of lots on a
18 private driveway to eight. The proposed building envelope reduction to 20 feet
19 by 40 feet is consistent with what is allowed for cluster attached housing, and
20 the requested number of lots served by a private driveway is consistent with
21 BMC 20.28.050.G(7), which allows an increase in lots for infill housing types
22 (which are similar to what is proposed), if required emergency access can be
23 provided. In support of the request to increase the number of lots served by a
24 private easement, the Applicant emphasized the lack of need for a public road
25 to provide neighborhood connectivity or provide for public safety. A public
26 road would utilize more land, result in more impervious surface, and create
27 public maintenance requirements. City Staff concurred that a public road is not
28 required. *Exhibits 1 and 1.A1.*

29 40. The Applicant requested modification of the design standard of BMC
30 20.29.030.E(5), which requires front porches and stoops to have no dimension
that is less than five feet wide. In this case, the front porches would be four feet
deep, but they would extend beyond 30% of the building façade. For several
units the front porch would extend the entire width of the unit. Although the
front porches would be only four feet deep, the eaves would extend beyond the
porch line, creating a covered area nearly reaching five feet in depth. Due to
the roof pitch and first-floor ceiling height, expanding the depth of the front

1 porches to five feet would result in eaves that are too low. *Exhibits 1.A1 and*
2 *1.A2.*

3 41. The Applicant requested modification of the five-foot side yard setback
4 standard of BMC 20.30.040 to create attached dwelling units.⁷ Of note, while
5 the proposal is not a cluster subdivision, the requested reduction is consistent
6 with BMC Table 20.30.045, which does not require a side yard setback for
7 attached units within a cluster subdivision within the Residential Single zone.
8 The proposed zero setback would reduce the development footprint and
construction costs in order to make it possible to create a 100% affordable
housing project. *Exhibit 1.A1.*

9 42. A modification of the parking standard of BMC 20.30.060 is also required for
10 the proposed common parking area. Pursuant to BMC 20.30.060 single-family
11 residential parking is required to be on the same site as the residence, with each
12 space measuring a minimum of nine feet by 18 feet. In this case, a common
13 parking area is proposed, with parking stalls that meet the dimensions specified
14 for open parking lots (8.5 feet by 17 feet).⁸ Staff noted that the common
15 parking area makes efficient use of land and results in a pedestrian-oriented
16 environment. However, the modification with respect to parking stall
17 dimensions only relates to the parking stalls required for the primary
residences. Parking for ADUs is governed by BMC 20.10.036, which requires
dimensions of nine feet by 18 feet and does not provide for modification.
Exhibit 1; Kathy Bell Testimony; BMC 20.10.036.B.9.b.

18 *Procedural Findings and Public Comment*

19 43. The City received the incentive program applications on February 7, 2024 and
20 determined them to be complete for the purpose of commencing project review
21 on March 6, 2024. *Exhibits 1 and 1.C1.*

22 44. After requesting and receiving additional information and related permit
23 applications for the ADUs and conditional use, the City issued a notice of
24 application for the project on May 28, 2024. The notice of application was
25 posted on site on June 3, 2024. *Exhibit 1 (page 4), 1.C1, and 1.C2.*

26
27 ⁷ The Staff Report states that a setback modification is not required, but the supporting analysis explains
28 only why the front and rear yard setbacks are compliant. *Exhibit 1, page 12.*

29 ⁸ See BMC 20.08.020, Figures 11 and 12.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

45. The City of Bellingham Planning and Community Development Department acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). After review of the environmental checklist, coal mine hazard evaluation, stormwater site plan, soil infiltration evaluation, Phase 1 environmental site assessment, and Department of Archaeology and Historic Preservation correspondence, the City issued a determination of non-significance (DNS) for the project on September 11, 2024.⁹ *Exhibit 1.D.*

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

47. Public comment on the project included the following arguments/issues of concern (paraphrased):
- The project would have an adverse impact on the natural environment, including wildlife. The stand of cottonwood trees should not be removed.
 - Detached residences would be more compatible with the neighborhood than townhouses.
 - The number of dwelling units would be too high and would be detrimental to the neighborhood.
 - There would be insufficient parking for the project. A request was made that additional ADU parking and visitor parking be required due to the lack of parking on Birchwood Avenue. At present, those parking on the street cannot do so without blocking the sidewalk.
 - The Applicant should be required to preserve open spaces through a conservation easement. There was concern that the Applicant would develop planned open spaces with additional housing or commercial uses in the future.
 - The application materials failed to identify the mine hazard. Clustering the units in a small area would exacerbate the subsidence risk.

⁹ 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 appealing the DNS was not entered into the record for this decision. *Exhibit 5.*

- The extent of requested modifications to standards is excessive and would be inconsistent with state law.
- The project would generate too much noise and traffic.
- The neighborhood already has a high level of crime.
- The affordable housing would result in a tax burden on neighbors.
- The affordable housing would reduce the market value of surrounding residences.
- The townhouses would reduce privacy for surrounding homeowners.
- Cluster developments are not allowed in the zone; the proposal constitutes a rezone.

Exhibits 1.F, 2, and 4; Testimony of JoAnn Padgett, Heather Richendrfer, Mary Lou White, and Louise Bjornson. Planning Staff and Applicant representatives timely responded in detail to the concerns expressed in public comment. The responsive information is incorporated into the preceding findings. *Exhibits 5 and 6.*

48. There was also public comment in support of the application. Those commenting in favor of the application noted the need for affordable housing in the community, that detached residences on large lots represent the least affordable type of housing, that other affordable housing developments of the Applicant have been positive, and that the proposal would be an improvement over the vacant structures on the property at present. *Exhibits 2 and 4; Joy Patterson Testimony; Sarah Gardner Testimony.*

49. Having heard all testimony and considered all timely admitted public comment, Planning Staff maintained their recommendation for approval of the project 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 has jurisdiction to hear and decide incentive program for innovative affordable homeownership projects pursuant to BMC 21.10.040.D(12). Pursuant to BMC 2.56.050.A(1), and BMC 23.12.020.A(1), the Hearing Examiner is authorized to render a decision on an application for preliminary short plat through the

1 Type III-A land use process established at BMC 21.10.040(D) if compliance with the
2 criteria for approval below is demonstrated.¹⁰

3 **Criteria for Review:**

4 *Land Use Subdivision*

5 Pursuant to BMC 23.12.030.A, preliminary short plats shall be given approval,
6 including preliminary plat approval subject to conditions, upon finding by the hearing
7 examiner that all of the following have been satisfied:

- 8 1. It is consistent with the applicable provisions of this title, the Bellingham
9 comprehensive plan and the Bellingham Municipal Code;
- 10 2. It is consistent with the applicable provisions of Chapter 23.08 BMC;
- 11 3. The division of land provides for coordinated development with adjoining
12 properties or future development of adjoining properties through, where
13 appropriate, the extension of public infrastructure, shared vehicular and
14 pedestrian access, and abutment of utilities;
- 15 4. Each lot in the proposal can reasonably be developed in conformance with
16 applicable provisions of the BMC, including but not limited to critical areas,
17 setbacks, and parking, without requiring a variance that is not processed
18 concurrently with the subdivision application pursuant to Chapter 23.48 BMC;
- 19 5. There are adequate provisions for open spaces, drainage ways, rights-of-way,
20 sidewalks, and other planning features that assure safe walking conditions for
21 pedestrians, including students who walk to and from school, easements, water
22 supplies, sanitary waste, fire protection, power service, parks, playgrounds, and
23 schools;
- 24 6. It will serve the public use and interest and is consistent with the public health,
25 safety, and welfare. The director shall be guided by the policy and standards
26 and may exercise the powers and authority set forth in Chapter 58.17 RCW, as
27 amended.

28 *Incentive Program For Innovative Affordable Homeownership Projects*

29 Pursuant to BMC 20.29.030, Approval Requirements. Innovative affordable home
30 ownership projects are subject to the following eligibility requirements:

A. Project Applicant.

¹⁰ Staff testified that the Applicant requested that the incentive program, land division, and conditional use permit be consolidated into one proceeding. *Kathy Bell Testimony.*

- 1 1. The organization or applicant can demonstrate experience in the creation and
2 retention of owner-occupied, resale-restricted affordable, income-qualified
3 homeownership.
 - 4 2. Notwithstanding the requirement in subsection (A)(1) of this section, an
5 organization or applicant that can demonstrate experience in providing market
6 rate housing and a mission statement of its intent to use that experience toward
7 achieving the goal of providing affordable housing shall be deemed to have met
8 this requirement.
 - 9 3. The organization can demonstrate the ability to employ restrictive resale
10 covenants, or other acceptable mechanisms, to retain the affordable low-income
11 units to income-qualified buyers as defined by BMC 20.29.020.
 - 12 4. The organization can demonstrate an ability and commitment to submit reports
13 to the city documenting compliance with the requirements pursuant to
14 BMC 20.29.050.
- 15 B. *Single-Family Homeownership.* The project must create no less than 51 percent of
16 the dwelling units as affordable low-income single-family residences that are
17 individually owned by their occupants. It must have controls in place, subject to
18 approval by the planning director or their designee, to ensure that the residences
19 remain owner-occupied.
- 20 C. *Guarantee of Affordability.* The project must have controls in place, subject to
21 approval by the planning director or their designee, to ensure that the required
22 affordable owner-occupied units remain affordable for 50 years from final plat
23 approval, and in accordance with the definition of affordable homeownership in
24 BMC 20.29.020. The controls shall include:
- 25 1. Agreements or covenants restricting resale to qualified low-income households
26 through the affordability period which can be enforced by the city; or
 - 27 2. Other methods approved by the planning director, or their designee, to ensure
28 that the project's low-income single-family residences remain affordable in
29 accordance with this chapter.
- 30 D. *Project Location.* Affordable dwelling units developed under this chapter must be
located:
1. In a residential single-family or multifamily zone within the city of Bellingham,
except within the Lake Whatcom watershed; or
 2. Within an urban village residential transition zone.
- E. *Design Review.* Projects developed under this chapter must comply with the
following design standards to protect, maintain, or enhance neighborhood character

1 and compatibility. This is intended to be accomplished with site and building
2 designs that improve the streetscape public realm and sense of security by
3 providing greater opportunity for more eyes on the street and social interaction, and
4 minimizing the presence of garages. Where these standards conflict with other
5 provisions in BMC Title 20, these standards shall apply. Modifications to these
standards may be considered through subsection (F) of this section, provided the
alternative designs proposed are consistent with the purpose of this section.

- 6 1. Emphasize single-story massing elements on front facades by incorporating
7 porches, stoops, balconies, bays and trim work to provide greater visual interest
8 from the fronting street, lane or pedestrian corridor.
- 9 2. Employ a change of materials, colors or textures on front facades of individual
homes to provide further articulation and additional variety and character.
- 10 3. Apply trim details used on the front facade in a consistent manner to all
11 elevations of a building.
- 12 4. Each dwelling shall have a covered front porch or stoop with main entry facing
13 a street, lane, or pedestrian corridor.
- 14 5. Front porches and stoops shall have no dimension less than five feet and shall
15 occupy no less than 30 percent of the front facade of a building. The longest
16 dimension of a porch or stoop shall be parallel to the fronting street, lane, or
pedestrian corridor.
- 17 6. Each residence shall include a front swing door (no slider) access to the
18 corresponding front porch or stoop.
- 19 7. A walkway shall be provided from the front porch or stoop to the abutting
public street, lane or pedestrian corridor.
- 20 8. Minimize the impact of the garage on the streetscape or lane by the following:
 - 21 a. Set garages back at least four feet from the front face of the building
22 (excluding front porches and stoops).
 - 23 b. Restrict garage width to no more than 40 percent of the front facade of a
24 building.
- 25 9. Fencing located between the primary building and the street, lane or pedestrian
26 corridor is limited to 42 inches in height and may be no more than 60 percent
27 opaque. Chain-link or cyclone fencing is not allowed adjacent to a street, lane,
or pedestrian corridor.
- 28 10. *Landscaping.*

- 1 a. Use planting materials and landscape structures such as trellises, raised beds
2 and fencing adjacent to streets, lanes and pedestrian corridors to unify the
3 overall site design and enhance the public realm.
- 4 b. Landscape beds shall include trees and a mix of small, medium and large
5 plantings for a “layered” appearance, except where landscaping standards
6 require a hedge, or an alternative design is approved by the planning and
7 community development director.

8 F. *Request for Regulatory Modification.* Project applicants may request modification
9 of city regulatory requirements listed below; provided, that the project complies
10 with applicable Washington State laws. Requests for modification must be
11 accompanied by detailed supporting documentation regarding the appropriateness
12 of, and the need for, the modification. Project applicants must meet all other
13 applicable development regulations in the Bellingham Municipal Code pertaining
14 to single-family detached or attached houses. Requests for regulatory modification
15 must accompany the preliminary plat, short plat, binding site plan, or lot line
16 adjustment application and must be noted on submitted site plans.

- 17 1. *Minimum Density.* Increased density of up to 50 percent over the otherwise
18 maximum density allowed in the applicable residential zone may be granted to
19 a project;
- 20 2. Other modifications:
 - 21 a. Minimum lot size;
 - 22 b. Minimum street frontage;
 - 23 c. Minimum front, side, and rear yard setbacks;
 - 24 d. Minimum parking requirements;
 - 25 e. Maximum lot coverage;
 - 26 f. Minimum usable open space;
 - 27 g. Other regulations to allow demonstration of innovative approaches to
28 affordable homeownership, energy conservation, low-impact development,
29 and stormwater management.

30 G. *Recommendation for Regulatory Modification.* The planning and community
development director, or their designee, may issue a recommendation to the
hearing examiner for modification of regulatory requirements listed in
subsection (F) of this section for projects applying under this chapter if the
planning director, or their designee, determines that approvals of requested

1 regulatory modifications are necessary to facilitate the construction of as many
2 affordable homes as allowable.

3 H. *Request for Exemption from Impact Fees and Stormwater Fee.* Project applicant
4 may request an exemption from impact fees for the affordable low-income units as
5 allowed under applicable sections of the Bellingham Municipal Code.

6 *BMC 23.12.060 Expiration*

7 A preliminary short subdivision approval shall be determined null and void if final
8 subdivision approval is not fully executed by filing the final plat mylars at the
9 Whatcom County auditor's office within three years of the date of preliminary
10 approval, unless an extension of time for the preliminary approval is approved in
11 accordance with BMC 23.12.070.

12 *BMC 23.12.070 Time limitations – Extension of a preliminary short or cluster
13 subdivision*

14 A. A one-time, one-year extension of the preliminary short plat or cluster subdivision
15 time limitation may be requested by the applicant and approved by the director
16 through the Type I permit process in BMC 21.10.100 if the following criteria are
17 met:

- 18 1. A request for preliminary short or cluster subdivision extension is submitted to
19 the director at least 90 days prior to the established expiration date of the
20 preliminary plat; and
- 21 2. The applicant demonstrates the following:
 - 22 a. A good faith attempt to file the final short plat mylars prior to the established
23 expiration date of the preliminary short subdivision; and
 - 24 b. All applications and/or permits that are necessary to satisfy all preliminary
25 plat conditions necessary to file a final plat have either been submitted or
26 approved by the city.

27 **Conclusions Based on Findings:**

28 *Incentive Program For Innovative Affordable Homeownership Projects*

- 29 1. As conditioned, the proposal satisfies the requirements of BMC 20.29.030.
30 With respect to Sections A through D of the ordinance, the Applicant is eligible
to develop a project under the incentive program, all of the dwelling units
would be affordable and owner-occupied, and the project would be located in a
Residential Single zone. The conditions of approval address required controls
to ensure compliance with program requirements is maintained. *Findings 3, 32,
33, 34, and 49.*

1 With respect to Section E of the ordinance, with approval of the front porch
2 depth modification and with the conditions recommended by Staff, the project
3 meets the applicable design standards. *Finding 35.*

4 With respect to Section F of the ordinance, sufficient documentation of the need
5 for regulatory modification was submitted, and the requested modifications are
6 approved. No evidence was submitted demonstrating that approval of the
7 modifications would cause the project not to comply with state law. The
8 project was reviewed pursuant to SEPA, and a DNS was issued. Although in
9 public comment on the application, copies of RCW 7.48.120 (nuisance defined)
10 and the state constitution were submitted, no specific relevant requirements
11 with which the project fails to comply were identified, nor encountered by the
12 undersigned during deliberations. With respect to concerns regarding the
13 number of modifications requested, the ordinance does not include a numeric
14 limit, and the undersigned is satisfied that the cumulative requests remain
15 consistent with the purpose of the program to facilitate affordable housing.
16 Although the Hearing Examiner is mindful of the similarity between the
17 proposed housing and the infill housing that is not allowed in a zone without a
18 cluster modifier, the modifications do not constitute a rezone because they are
19 within the range of modifications authorized by the Incentive Program, which is
20 allowed in the underlying zone. The characteristics of the proposed design are
21 compatible with surrounding detached single-family residences, specifically
22 including building sizes and heights that are comparable to detached single-
23 family residences and retained open space and are well under code-allowed
24 maximum dimensions in the zone. Indeed, the project does an admirable job of
25 developing compatible structures and placing them on the site in a manner that
26 maximizes the affordability of each unit while providing largely generous
27 setbacks to the exterior site boundaries and without generating excess
28 impervious surface area, while maintaining the existing Farm. *Findings 3, 5,*
29 *11, 14, 30, 36, 37, 38, 39, 40, 41, 42, 47, and 49.*

22 *Short Subdivision*

- 23 2. As conditioned, the proposal is consistent with BMC Title 23, the
24 comprehensive plan, and the municipal code. Compliance with the relevant
25 plat design, lot standards, and improvement standards of BMC Title 23 is
26 addressed in Conclusion No. 3, below. The proposal is consistent with the
27 Comprehensive Plan because it would provide needed affordable housing in an
28 area where adequate public facilities exist, using a building scale that is
29 compatible with the surrounding neighborhood. As conditioned and with
30 approval of the modifications requested through the affordable housing
incentive program, the proposal is consistent with the BMC. The conditions of

1 approval require a critical area permit to be obtained to ensure consistency with
2 BMC 16.55. The proposal was reviewed under SEPA, and a DNS was issued.
3 *Findings 3, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30,*
4 *31, 36, 37, 38, 39, 40, 41, 42, 45, and 49.*

- 5 3. As conditioned, the proposal is consistent with BMC 23.08. The project
6 implements several purposes of the City's plat design and lot standards,
7 including that it efficiently utilizes the land while maximizing the overall unit
8 yield, integrates open spaces into the development, encourages compact and
9 walkable neighborhoods, and promotes "eyes on the street" by clustering the
10 units around a central pedestrian corridor in a manner that allows for
11 surveillance. Consistent with the Birchwood neighborhood plan, the proposal
12 includes features that make it compatible with the existing neighborhood
13 character, including building sizes and heights that are comparable to detached
14 single-family residences and retained open space. Natural features have been
15 addressed through the proposed tree retention in the northeast corner of the site.
16 Based on professional evaluation, the underlying mine does not warrant a
17 different site design, but this would be further evaluated through critical area
18 permit review prior to construction permit issuance. Clearing and grading
19 would not extend to the proposed open spaces and would be accomplished
20 consistent with City permitting requirements. No park land or right-of-way
21 dedication is required for the project. The project incorporates pedestrian
22 features. The single point of access is appropriate due to the property size and
23 surroundings, and the City did not request a street extension to adjacent
24 properties. The street layout includes provisions for all modes of
25 transportation. However, it should be noted that there might be a conflict
26 between Staff's recommendation to reduce the lane width and the parking lot
27 drive aisle requirements described in BMC 20.08.020 Figures 10 and 11 and
28 BMC 20.30.060.C(1), if applicable. The lane should only be reduced if it can
29 be done while allowing for safe vehicle maneuvering into and out of parking
30 spaces. Street trees would be provided. With the density increase approved
through the affordable housing incentive program, the proposed number of lots
is consistent with the maximum allowed. The reduced lot sizes are also
approved through the incentive program and are consistent with the minimum
of 2,000 square feet specified for attached residences in BMC 23.08.050.A(3).
The lots created through the subdivision would have logical boundaries, would
be buildable based on applicable setback and other standards, and would abut
public infrastructure through easements. The reduced building envelopes,
which are approved through the incentive program, would be consistent with
the requirement for attached housing in BMC 23.08.060.A. The Birchwood

1 Avenue street frontage would be improved consistent with City standards.
2 Water, sewer, and stormwater management would be provided. *Findings 2, 3,*
3 *6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 29, 30, 37, 38, 39, 41,*
4 *and 49.*

4 4. Coordinated development features such as extension of infrastructure to
5 adjoining properties and shared access are not warranted for the project.
6 *Findings 5 and 16.*

7 5. With the modifications approved through the affordable housing incentive
8 program, each lot can be developed without need for variance. *Findings 6, 7,*
9 *13, 14, 15, 41, and 42.*

10 6. As conditioned, the subdivision makes adequate provision for open spaces,
11 drainage, rights-of-way, sidewalks, safe walking conditions, sanitary waste, fire
12 protection, power service, parks, playgrounds, and schools. Open space would
13 be provided within the lots, some of which would be oversized relative to the
14 development proposed. With respect to safe walking conditions, there is an
15 existing walkway between the subject property and the elementary school. The
16 required frontage improvements along Birchwood Avenue would improve
17 walking conditions by preventing drivers from parking on the sidewalk. The
18 internal private lane would have walkways on both sides and would have a
19 turn-around to satisfy emergency access/fire department requirements. There
20 are public parks/recreational facilities within walking distance of the subject
21 property. The conditions of approval require payment of transportation, school,
22 and park impact fees unless an exemption is obtained. *Findings 2, 8, 13, 16,*
23 *18, 21, 22, 23, 27, 28, 29, and 49.*

24 7. As conditioned, the subdivision would serve the public use and interest and
25 would be consistent with the public health, safety, and welfare. The
26 subdivision would serve the public use and interest by providing owner-
27 occupied affordable housing. Public health would be addressed through the
28 connections to public water and sewer utilities. With respect to public safety,
29 based on the submitted geologic hazard report, the risk of subsidence at the
30 project site is low. However, the conditions of approval require the Applicant
to complete the critical area permit process, which might result in additional
conditions to protect public safety. The proposed nine lots are consistent with
the density allowed in the zone under the Incentive Program. Construction
impacts would be addressed through compliance with City noise and
construction-related regulations. The project was issued a multimodal

1 transportation concurrency certificate, meaning its traffic can be accommodated
2 by the existing street network. *Findings 1, 6, 7, 22, 32, 33, and 49.*

3 **DECISION**

4 Based on the preceding findings and conclusions, the request for a nine-lot subdivision
5 to be developed as an Incentive Program for Innovative Affordable Homeownership
6 project at 2912 Birchwood Avenue is **APPROVED** subject to conditions below.

7 A. General Requirements

- 8 1. The Incentive Program proposal shall be developed and operate generally
9 consistent with the application materials and lot layout as shown in Exhibit
10 1.A1 through 1.A3.
- 11 2. Modifications to this decision shall be processed in accordance with applicable
12 provisions of the BMC.
- 13 3. A clearing and grading plan for the property, including rights-of-way, shall be
14 submitted for review and approval by the Planning and Public Works
15 Departments concurrent with review of civil drawings for the infrastructure.
- 16 4. Heavy equipment and construction work shall be compliant with Chapter 10.24
17 BMC, except that no exterior work shall occur after 7:00 pm.
- 18 5. Impact fees for transportation, schools and parks shall be paid in accordance
19 with applicable BMC requirements unless waived through applicable sections
20 of the BMC.
- 21 6. This land use decision shall expire as provided in Chapter 21.10 BMC.
- 22 7. This land use decision is subject to the issuance of ADU permits and a minor
23 critical areas permit for the site's location in a mine hazard area.

24 B. Conditions For Incentive Program

- 25 1. The proposed development shall be consistent with the plans, specifications and
26 other materials submitted in support of the proposal, except as modifications
27 are required to comply with other conditions set forth herein. The proposed site
28 plan is included in Exhibit 1.A2.
- 29 2. The proposed lots shall be used for single-family residences. They shall be

1 maintained as permanently affordable, owner-occupied homes. Each unit shall
2 be occupied by a purchaser who qualifies in accordance with BMC
3 20.29.020.A. The housing expenses for each purchaser shall be limited as
4 provided in BMC 20.29.020.B.

- 5 3. Controls shall be maintained to ensure that all nine primary residences and all
6 of the ADUs remain owner-occupied by a qualified purchaser and that they
7 remain affordable, as defined by BMC 20.29.020 and 20.29.030.C. The ground
8 lease and other documents establishing these controls shall be subject to the
9 review and approval of the Director of the Planning and Community
10 Development Department.
- 11 4. The Applicant shall submit a report on or before January 1st of every odd-
12 numbered year as required in BMC 20.29.050. The first report shall be
13 submitted in 2027.
- 14 5. The Applicant shall not transfer ownership of the land without prior approval of
15 the City of Bellingham. The land may only be transferred to another qualified
16 organization or to qualified purchasers with controls in place to ensure
17 affordability and qualified owner occupancy.
- 18 6. The overall design of the buildings shall be amended to include building
19 materials and architectural detailing to clearly delineate the individuality of
20 each unit on all sides of the buildings.
- 21 7. The private driveway serving the site shall include a four-foot, pedestrian
22 pathway on each side of the driveway that is constructed of a material that is
23 differentiated from the driving surface. The total width of the driveway shall
24 satisfy the minimum parking and circulation standards for the underlying zone.
- 25 8. The width of the internal walkways serving the individual units should be
26 reduced to 42 inches for the main common walkway and the individual
27 walkways associated with each residential unit should be reduced to three feet.
- 28 9. A final landscape plan for the entire site meeting the provisions of Chapter
29 20.29 BMC, inclusive of trees spaced 50 feet on center along the private
30 driveway, shall be submitted for City review and approval prior to issuance of
the first building permit.
10. Except as modifications are provided herein, the project shall comply with all

1 applicable provisions of the Bellingham Municipal Code, as well as applicable
2 state and federal laws.

3 11. The following modifications to Bellingham Municipal Code regulations are
4 approved:

- 5 a. A density increase of 50% to allow nine single-family units on the subject
6 property.
7 b. Reduction in lot sizes from 20,000 square feet to a minimum of 3,338
8 square feet.
9 c. Reduction in side setbacks to zero feet between the attached units.
10 d. Allow group open parking and a reduced parking stall width from nine to
11 eight feet, five inches.
12 e. Allow a reduced minimum front porch dimension from five to four feet.
13 f. Relief from the land division regulations that would otherwise limit the
14 number of lots that can be served by a single driveway to eight and the
building envelope dimensions to accommodate the proposed lot layout
shown on Exhibit 1.A3.

15 C. Conditions For Final Land Division Approval

16 The Applicant shall obtain all necessary permits and/or approvals from the City
17 necessary to satisfy the following conditions prior to final land division approval
18 pursuant to Title 23 BMC.

- 19 1. The preliminary lot layout is approved as shown on Exhibit 1.A3.
20 2. Access to the site shall be limited to one driveway off Birchwood Avenue as
21 shown in Exhibit 1.A2.
22 3. Birchwood Avenue shall be improved to three-quarter City standard of a
23 residential street across the full frontage of the property.
24 4. The extension of public water and sewer mains to serve each lot shall be
25 installed as determined necessary by the City Engineer through a public
26 facilities construction agreement.
27 5. Stormwater management shall be provided in accordance with Chapter 15.42
28 BMC and all stormwater facilities shall be dedicated to the City unless
29 otherwise determined by the City Engineer.

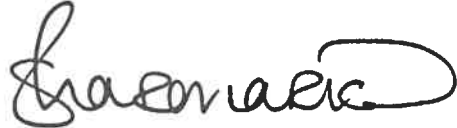
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

6. A landscape plan for the open stormwater facilities and street trees meeting the provisions of BMC 23.08.080 shall be submitted for City review and approval prior to issuance of the required construction permits for public infrastructure.
7. A street tree permit application shall be submitted and these trees shall be installed pursuant to BMC 23.08.080(C and G).
8. All required public and private easement documents as required by this approval and the Consolidated Permit shall be submitted to the City concurrently with checkprints for review and approval by the City departments and recorded concurrently with the final plat. Required easements include, but are not limited to, common wall, conservation, private access, parking, and public utilities.
9. The Applicant shall provide evidence to demonstrate compliance with BMC 23.08.070 (E and F).
10. Mailboxes shall be installed as approved by the United States Postal Service.
11. Monumentation shall be as required in BMC 18.28.180.
12. The following shall be shown on the final plat, as applicable:
 - a. All existing and required easements.
 - b. A 10-foot-wide easement adjacent to public rights-of-way reserved for utility purposes, as determined necessary by the utility providers.
 - c. A note stating that all lots are subject to those conditions set forth in this Order, and as may be amended in accordance with the municipal code.
 - d. A note referencing any private covenants specific to the proposed lots.
 - e. Stormwater limitations.
13. Private covenants shall be recorded with the plat to specifically define the common, limited common, and private elements of the proposal. The covenants shall also include the maintenance obligation of these elements and a cost sharing mechanism for each.

1 /
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

DECIDED November 4, 2024.

BELLINGHAM HEARING EXAMINER



Sharon A. Rice

Findings, Conclusions, and Decision

page 32 of 32

H:/DATA/HEARING EXAMINER/DECISIONS/KCLT 2912 Birchwood Ave. SUB Decision

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