

Exhibit 2

JoAnn Pagett, dated 9/25/2024
Mary Lou White, dates between 9/20/2024 through 9/24/2024
Mike Heintz, dated 9/25/2024
Kristine Heintz, dated 9/25/2024
Sara Jo Day, dated 9/25/2024
Heather Richendrfer, dated 9/25/2024

Exhibit 4

Mike and Kristina Heintz, dated 9/27/2024
Joel Kronenberg, dated 9/28/2024
Mary Lou White, submitted at public hearing on 9/25/2024

**CITY OF BELLINGHAM
PLANNING AND COMMUNITY DEVELOPMENT
POST HEARING RESPONSE TO PUBLIC COMMENT
FOR**

**KCLT LaFreniere Court Housing Project and City Sprouts Farm
October 1, 2024**

PROJECT NO.: Incentive Program for Innovative Affordable Homeownership Projects (SUB2024-0006) and City Sprouts Farm (Agricultural Nursery (USE2024-0012))

APPLICANT: Ali Taysi, AVT Consulting, 1708 F Street, Bellingham, WA 98225

OWNERS: Kulshan Community Land Trust (KCLT), 1715 C Street #201, Bellingham, WA 98225

I. BACKGROUND

1. September 25, 2024: The Hearing Examiner held an open record public hearing to consider KCLT's request to utilize the Incentive Program for Innovative Affordable Homeownership (Incentive Program) and for a Conditional Use Permit to operate an agricultural nursery.
2. September 25, 2024: The Hearing Examiner's Office issued a post-hearing schedule holding the written record open until September 27, 2024 for 1) post-hearing written public comment from people who were not able to testify at hearing due to technology or access issues and 2) until October 1, 2024 for staff and applicant to provide written responses to public comment submitted after publication of the staff report and at the hearing (including Mary Lou White's submittal).
3. September 26, 2024: Staff confirmed all written documents submitted on September 25, 2024 by Ms. White had been received. These documents are submitted into the record as **Exhibit 4**.
4. September 27, 2024: The City received two post hearing written comment as a result of technological challenges. This comment is included in **Exhibit 4**.
5. October 1, 2024: The City Attorney's Office has confirmed that the letter submitted by Ms. White on September 25, 2024 should not be entered into the record as a public comment letter. Instead, it appears to be a notice of appeal of the SEPA threshold determination. That type of appeal, if any, can only be filed in conjunction with the ultimate decision on the consolidated application.

II. PUBLIC COMMENT – Exhibits 2 and 4

This document provides responses to written public comment submitted after publication of the staff report, which are attached as **Exhibits 2 and 4**. Some of these public comment letters and oral testimony raised the same concerns as those evaluated in the Staff Report, Exhibit 1. Staff believes public comment analysis in the staff report sufficiently addresses these concerns and is therefore not providing a duplicate response.

Exhibit 2 consists of public comment letters that were received by the Hearing Examiner's office after issuance of the Staff Report, Exhibit 1, and before the close of the public comment period on September 25, 2024. Staff was made aware by Ms. White that additional documents had been submitted on September 25, 2024 as well. Staff was able to verify that those documents had been submitted and was able to confirm the contents of that submittal with Ms. White on September 26, 2024. Those documents have been submitted into the record as **Exhibit 4**.

Exhibit 2

JoAnn Pagett, dated 9/25/2024

Ms. Pagett's raised concerns regarding the risk development poses to the structural integrity of the coal mine. BMC 16.55 regulates coal mines as a critical area and all proposed development will be reviewed against those regulations and only allowed if determined to be compliant. Staff submitted evidence at the public hearing that these concerns would be admitted into the public record for the Critical Area Permit that is required to evaluate the proposal's potential impact to the coal mine.

Mary Lou White, dates between 9/20/2024 through 9/24/2024

Staff provided responses to the public comment in the emails and no additional response is necessary.

Mike Heintz, dated 9/25/2024

The public comment included support for the proposal and no additional response is necessary.

Kristi Heintz, dated 9/25/2024

The public comment included support for the proposal and no additional response is necessary.

Sara Jo Day, dated 9/25/2024

The public comment included support for the proposal and no additional response is necessary.

Heather Richendrfer, dated 9/25/2024

Ms. Richendrfer's public comment included 4 attachments: 1) signed acknowledgement supporting Mary Lou White's letter included in Attachment F of the Staff Report, Exhibit 1, for this proposal, 2) wildlife photos, 3) parking photos, and 4) public comment letter. The concerns raised in Mary Lou White's letter were previously addressed in the Hearing Examiner's staff report, Exhibit 1, and at the hearing. Staff would like to add some additional comment concerning

parking.

The neighborhood's impacts from parking are localized and appear to be limited to once a day during elementary school pick up. Parking generated from the proposed uses should not significantly contribute to the parking related issues. The project will provide all code required parking onsite in designated parking areas. The required three quarter street improvements in Birchwood Avenue along the project's frontage would not provide sufficient width to establish on street parking.

Response to Public Testimony at Public Hearing

Staff responded to public testimony from all parties at the hearing except Ms. White. Staff doesn't have any additional information to add concerning oral testimony.

Exhibit 4

Mike and Kristina Heintz, dated 9/27, 2024.

The public comment included support for the proposal and no additional response is necessary.

Joel Kronenberg, dated 9/28/2024.

Mr. Kronenberg raised concerns regarding neighborhood character, traffic, school capacity, and lack of pedestrian facilities. The concerns have been raised in already submitted public comments with responses from staff. Staff has no additional comments and requests the Hearing Examiner consider public comment analysis in the staff report and this response.

Mary Lou White, submitted public comment via email on 9/25/2024 and presented oral testimony at the hearing.

Ms. White's public comment provides rational to support her position that the application for the Incentive Program pursuant to Chapter 20.29 BMC does not meet two of the four decision criteria and the applications are misleading and omit information in both the SEPA and Narrative.

Staff respectfully disagrees that the proposal does not meet BMC 20.29.030(F). The underlying code provisions were submitted to and evaluated by Washington State Department of Commerce and during Commerce's regulatory timeframe to review. Commerce did not provide any comment to the City that this chapter of the Bellingham Municipal Code violates any Washington State laws and adoption of the regulations were not appealed.

Ms. White's testimony states the proposal violates RCW 14.21C.20 (SEPA), RCW 7.48.130 and 150 (Public and Private Nuisance), Washington State Constitution Section 12 and that this is a spot zone.

The project is not a nuisance as defined by the cited RCW provisions. The act of the City issuing a decision on the pending applications is not an unlawful act. These RCW provisions cite unlawful actions that could be performed by an entity, such as a business or individual. Land use application review is not listed as either a public or private nuisance in these laws.

Staff has no evidence to support the project violates Section 12 of the Washington State

Constitution and staff was unable to derive an argument from Ms. White's written and oral testimony to justify this claim.

Ms. White asserts the proposal is a spot zone. A spot zone refers to an action that includes a request to reclassify the zoning of real property in a manner that would be inconsistent with the existing zoning of abutting and/or adjacent properties. The property is proposed to be developed under the existing residential zoning as allowed by BMC 20.29, the proposal is not a spot rezone.

A rezone in the City of Bellingham is a legislative action that requires approval by Ordinance from the City Council. There are no applications on file with the City of Bellingham for a rezone of the subject site. The Hearing Examiner lacks the authority to rezone a subject property and therefore the decision issued for this project will not constitute a rezone or a spot zone.

Ms. White presented evidence that the legislative process for the Incentive Program lacked appropriate public notice. The Incentive Program was approved by Ordinance No. 2020-03-005 and repealed and replaced the Demonstration Ordinance (Chapter 20.27 BMC). Ordinance No. 2020-03-005 includes recitals acknowledging appropriate public notice was provided for both the Planning Commission and City Council proceedings. If there was any error of procedure, it would have been unintentional and any opportunity to challenge such an error has passed.

Public comment implied the proposal does not meet some of the local or state regulatory requirements. BMC 20.29.030(F) states an applicant may seek modifications from regulatory requirements outlined in the subsection provided the project complies with applicable state laws. Chapter 20.29 of the Bellingham Municipal Code does not give the Hearing Examiner authority to approve a project that does not comply with application state laws nor does it give the Hearing Examiner the authority to determine if it violates state law.

BMC 20.29.030(F) goes on further to state that applicants must meet all other applicable development regulations of the Bellingham Municipal Code pertaining to single family detached and attached housing. The code's allowance to request a modification assumes the project does not have to meet all regulatory requirements of the Bellingham Municipal Code if the Hearing Examiner determines the appropriateness and need for the modification.

Staff evaluated the proposal for consistency with the Bellingham Municipal Code and determined it complies with the City's regulatory requirements for single-family attached housing provided the requested modifications are approved by the Hearing Examiner. The narrative includes statements eluding that the proposal can 'almost entirely' and 'reasonable be compatible' meet the regulatory requirements. Staff did not interpret these statements to be misleading but instead supported the applicant's request for modifications.

Exhibit 1 further clarifies the use of the Incentive Program is applicable on single family zoned property and in this specific instance, is consistent with the Bellingham Comprehensive Plan. There was no evidence admitted in the public record to support otherwise.

The February 14, 1979 report – Alternatives To Protect Property Owners From Damages Caused by Mine Subsidence evaluated and identified alternatives that could protect property owners from damages caused by mine subsidence. The report is dated and is nonbinding but the underlying information is relevant. Two alternatives listed in the report include land use controls, such as zoning and subdivision regulations, and building standards. It should be noted that the City of Bellingham did have both zoning and subdivision regulations at the time the report was prepared, but like many of cities at that time, lacked critical areas regulations. Since 1979, the City has

adopted regulatory requirements that advance these two alternatives through the Land Division Ordinance (Title 23 BMC), Critical Areas Ordinance (Chapter 16.55 BMC) and adopted building codes (International Residential Building Code). These regulations evaluate potential risks resulting from development and recommend appropriate mitigation, if necessary, to prevent adverse impacts to life or property.

The site's biodiversity will not be permanently lost. Biodiversity is not limited to the natural, undisturbed state of an ecosystem. Development will change the existing biodiversity but does not preclude the future owners from creating a biodiversity that is more suitable to urban development. It is anticipated that this will occur through the initial requirement to provide site landscaping and the action by future homeowners to supplement this landscaping.

III. CONCLUSION

The Incentive Program allows a qualified applicant opportunities to develop property other than standard market rate development. The authority and purpose of the Incentive Program Chapter implements the Growth Management Act and the City's Comprehensive Plan by allowing housing opportunities for all economic segments of the community through the creation of regulatory requirements that increase the supply of affordable housing. The regulatory regulations of this chapter encourage innovation for single-family ownership opportunities. Both KCLT and the proposed applications fulfill this overarching authority and purpose.

Development of the site will generate impacts but not to a degree requiring mitigation beyond compliance with the existing regulations of the Incentive Program or the Conditional Use. Staff did not find any evidence that the project violates state law concerning public and private nuisances, SEPA or Section 12 of the Washington State Constitution.

Based upon staff's review of the additional, post-hearing public comment staff is not recommending any changed conditions of those submitted as Exhibit 1 – HEARING EXAMINER STAFF REPORT LaFreniere Court Housing, dated September 25, 2024.

Prepared By:



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