RESOLUTION NO. 2012-12

A RESOLUTION ADOPTING THE BELLINGHAM PLANNING AND DEVELOPMENT COMMISSION FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF DENIAL FOR A SITE SPECIFIC COMPREHENSIVE PLAN AND NEIGHBORHOOD PLAN AMENDMENT AND REZONE WITHIN THE HAPPY VALLEY AND FAIRHAVEN NEIGHBORHOODS.

WHEREAS, Don Kehrer on behalf of Briar Development Company LLP (Haggen) submitted a request for a site-specific comprehensive and neighborhood plan amendment to change the land use classification (zoning) and move the neighborhood boundary line; and

WHEREAS, the requested amendments would amend the boundary between Area 5 of the Happy Valley Neighborhood and Area 2A of the Fairhaven Neighborhood and rezone approximately 21,000 square feet of property from Residential Single to Commercial; and

WHEREAS, after mailed and published notice as required by Bellingham Municipal Code (BMC) Chapter 21.10, the Planning and Development Commission held a public hearing on March 29, 2012 on the proposed amendments; and

WHEREAS, the Planning and Development Commission considered the staff report and comments received and thereafter made Findings of Fact, Conclusions, and a Recommendation for denial of the proposed amendments to the City Council; and

WHEREAS, after mailed and published notice as required by BMC 21.10, the City Council held a public hearing on the proposed amendments on May 7, 2012; and

WHEREAS, the City Council considered the recommendation of the Planning and Development Commission, staff report and comments received and voted to deny the requested Comprehensive and Neighborhood Plan amendment and rezone.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:

1. The City Council adopts the Findings of Fact, Conclusions and Recommendation of the Planning and Development Commission, attached as
Exhibit A, and hereby denies the proposed Comprehensive and Neighborhood Plan amendment and rezone requested by Briar Development Company LLP.

PASSED by the Council this 14th day of May, 2012.

[Signature]
Council President

APPROVED by me this 15th day of May, 2012.

[Signature]
Mayor

ATTEST:
Finance Director

APPROVED AS TO FORM:

[Signature]
Office of the City Attorney

City of Bellingham
City Attorney
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BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

MARCH 29, 2012

SUMMARY
Following the public hearing and deliberation on the proposed Comprehensive Plan Amendment and Rezone to amend the boundary between Area 5 of the Happy Valley Neighborhood and Area 2A of the Fairhaven Neighborhood and rezone the subject area from Residential, Single to Commercial, the Bellingham Planning Commission has determined that the proposed changes do not comply with all the neighborhood plan amendment criteria in BMC 20.20.040 A 2 or the rezone criteria in BMC 20.19.030 A. The Commission further finds that the proposal as presented will not implement the goals and policies of the Bellingham Comprehensive Plan.

I. FINDINGS OF FACT

1. Project or Proposal Description

Don Kehrer on behalf of Briar Development Company LLP (Haggen) submitted a site-specific comprehensive plan amendment to allow a change in land use classification (zoning) and the movement of a neighborhood boundary line. The property is generally located in the 1400 block of 14th Street and abuts Larrabee and McKenzie Avenues.

If approved, the proposal would rezone approximately 21,000 square feet of property within Area 5 of the Happy Valley Neighborhood from Residential, Single to Commercial. The neighborhood boundary between the two neighborhoods would also be adjusted and incorporated into Area 2A of the Fairhaven Neighborhood.

2. Background Information/Procedural History

On November 30, 2010, the Planning and Community Development Department received a docketing request from Don Kehrer on behalf of Briar Development Company for a site-specific rezone and a neighborhood boundary change between the Fairhaven and Happy Valley Neighborhoods.

In 2011, the City Council docketed the proposed Comprehensive Plan amendment and site specific rezone for review.

On March 1, 2011, a pre-application meeting was held with City staff and a public neighborhood meeting was held at Fairhaven Middle School. The purpose of both meetings was to provide an overview of the Comprehensive Plan and Neighborhood Plan amendment and rezone request, identify potential issues, and introduce the docketed amendment proposal.

3. Public Comment

Notice of the Planning Commission hearing was mailed to neighborhood representatives and associations on February 17, 2012. The notice was also published in the Bellingham Herald.
Staff has received 25 comments regarding the proposal and its docketing. Fifteen of those comments recommended either to not docket the proposal or to deny the rezone. Issues regarding traffic, commercial encroachment and the lack of a specific plan were raised. The Fairhaven Neighbor's Neighborhood Association also submitted a letter regarding the draft Fairhaven Neighborhood and Urban Village Plan that noted the property should be included in the proposed RTZ 4 zone and include retail uses through the Conditional Use Permit review process.

4. State Environmental Policy Act (SEPA) Determination if applicable

A Determination of Non-Significance was issued on February 14, 2012.

5. Consistency with the Comprehensive Plan, and/or Review Criteria

Bellingham Municipal Code (BMC) 20.20.040 A and BMC 20.19.030 A, notes the Planning Commission and the City Council shall use the following criteria to evaluate Comprehensive Plan Amendments and rezone requests:

Comprehensive and Neighborhood Plan Amendment Criteria
BMC 20.20.040 A

1. There exists an error, omission or inconsistency in the pertinent comprehensive plan or neighborhood plan provision; OR

2. All of the following criteria have been met:

   a. The proposed amendment is consistent with the Growth Management Act and other applicable laws.

   The Commission finds that the City's adopted Comprehensive Plan contains several land use policies that promote commercial retail, commercial growth in urban centers, and commercial land supply within the City, such as:

   Comprehensive Plan - Framework Land Use Policies (FLU)

   FLU-9 Successful commercial and industrial areas and a strong and diverse economy should be promoted by encouraging office, retail, high technology, light and heavy industrial uses in appropriate locations. Enough appropriately zoned developable land should be available to accommodate the forecasted 20-year employment growth.

   FLU-15 Growth in Bellingham will be accommodated primarily in compact "urban centers" (or "villages") as described in the Community Growth Forum report, while preserving the character of existing single family neighborhoods. (See specific urban center policies in Policy Section C.)

   LU - 20 Land area sufficient to accommodate the 20-year population projections shall be available in Bellingham and the urban growth areas, as required by RCW 36.70.110, including land area for commercial and industrial development.

   However, the land use policy section of the Comprehensive Plan also includes policies that specifically relate to the protection of existing neighborhoods, including but not limited to:
FLU-1 It is the City's overall goal to preserve and protect the unique character and qualities of the existing neighborhoods. All policies, proposed development code and zoning changes should be reviewed with this goal in mind.

FLU-2 Bellingham's land use pattern should accommodate carefully planned levels of development that promotes efficient use of land, reduces sprawl, encourages alternative modes of transportation, safeguards the environment, promotes healthy neighborhoods, protects existing neighborhood character, and maintains Bellingham's sense of community.

FLU-5 The character of single family neighborhoods should be protected as higher intensity land uses are located in designated urban villages and corridors.

Happy Valley Neighborhood Plan:

HV GOAL -2: Happy Valley Neighborhood will preserve its residential character and enhance it quality by discouraging through traffic and automobile usage on residential streets and encourage a development pattern that is pedestrian, bicycle, and transit friendly.

If the subject area is rezoned and the 13th St vacation is not approved, a separate commercial block would be created. Individual parcels could be sold off and developed separately. This type of development could intensify conflicts between adjacent single family residences and the new commercial uses. Without a site specific proposal and not knowing the outcome of the 13th Street right-of-way vacation, a thorough analysis of the proposal could not be performed and any associated development impacts are not fully known at this time.

A consolidated review of the rezone, street vacation, and potential development proposal should be evaluated together and identified impacts should be specifically addressed through special conditions or a development agreement.

b. The proposed amendment addresses changing circumstances, changing community values, and is consistent with and will help achieve the comprehensive plan goals and policies.

The Commission finds that there have been no substantial changes in the vicinity of the proposal, except for the adaptive use approval for the Firehouse Performing Art Center in 2003 and a rezone that occurred in Area 9 of Fairhaven Neighborhood. As part of that rezone, a Concomitant Agreement was required to address development conditions designed to mitigate potential impacts.

The Happy Valley Neighborhood Plan received a full update in 2001 and the original 1980 Fairhaven Neighborhood Plan is currently being updated to incorporate a new Fairhaven Neighborhood and Urban Village Plan this year. Though this draft plan proposes changes to the adjacent multi-family zoning to the south of the property, these changes have not been finalized.

As the applicant’s proposal is based on a possible future expansion of the grocery store and on an assumption that the City will vacate a portion of 13th Street, there is no assurance of the type of development that will occur on the properties if the amendment proposal is approved prior to knowing the outcome of a street vacation request. At this point there are too many unknown
factors (land use/development) to support a rezone and boundary change without a site specific proposal. Not being able to do a comprehensive analysis of all the components needed for this request limits the City's ability to ensure the existing residential areas are protected and the applicable policies in the comprehensive plan have been met.

c. The proposed amendment will result in long term benefit to the community and is in the community's overall best interests;

The Commission finds that at this time, the proposal is not in the best interest of the community at this time because there are too many unknown factors associated with the proposal. There is no guarantee that a street vacation will be approved, which could significantly alter the applicant's proposal to possibly expand the grocery store or incorporate the area for additional parking in the future.

d. The amendment will not adversely affect the public health, safety or general welfare;

The Commission finds that in order to fully determine that the proposal will not affect the public health, safety or general welfare and meet this criteria, a consolidated review of the rezone, street vacation, and potential development proposal should be evaluated together. All identified impacts associated with the proposal should be specifically addressed through special conditions or a development agreement to ensure that the adjacent residential neighborhood is not adversely impacted. At this time, it cannot be found that the amendment will not adversely affect the public health, safety or general welfare. Therefore this criteria has not been met.

e. If a concurrent rezone is requested, the proposal must also meet the criteria for rezones in BMC 20.19.030

See below

Rezone Criteria
BMC 20.19.030

1. It is consistent with the comprehensive plan or corresponds to a concurrent comprehensive plan amendment application.

The Planning Commission finds that the Comprehensive Plan does include policies promoting economic growth and appropriate locations for commercial uses, however it also includes policies regarding the protection of established single family zones. The applicant's request is based on an assumption that the City will vacate a portion of 13th Street to allow the possible future expansion of the Haggen grocery store. The Planning Commission finds that without a site specific proposal or a comprehensive analysis of all the components needed for this request, the existing residential areas may not be fully protected and the applicable policies in the comprehensive plan will not be met. Also see findings under Comprehensive Plan Amendment Review Criteria 2. a. and 2. b.

2. It will not adversely affect the public health, safety or general welfare.

Without a site specific proposal and concurrent street vacation review, the Planning Commission cannot find that the proposal will not adversely affect the public health, safety or general welfare. Also see findings under Comprehensive Plan Amendment Review Criteria 2. d.
3. It is in the best interests of the residents of Bellingham.

The Planning Commission finds that having a grocery store in the Fairhaven District is in the best interests of the residents of Bellingham, however without a specific plan and decision on the vacation of 13th Street, this rezone is premature. Also see staff's response to Comprehensive Plan Amendment review criteria 2. c.

4. The subject property is suitable for development in general conformance with zoning standards under the proposed zoning district.

The Commission finds that the site is flat and utilities are available for development. The site could be developed in general conformance with the proposed zoning standards.

5. Adequate public facilities and services are, or would be, available to serve the development allowed by the proposed zone.

The Commission finds that City public facilities and services are available to serve the subject site area.

6. It will not be materially detrimental to uses or property in the immediate vicinity of the subject property.

The Planning Commission finds that though the uses nearby are not entirely single family, they have undergone site specific detailed review to ensure they are designed in a way that is not detrimental to the surrounding area. Without that site specific review and vacation of 13th Street, the Commission finds the proposal may be detrimental to uses or property in the immediate vicinity. Also see staff's response to Comprehensive Plan Amendment review criteria 2. c. and 2. d.

7. It is appropriate because either:

a. Conditions in the immediate vicinity have changed sufficiently since the property was classified under the current zoning that a rezone is in the public interest; or

The applicant has stated that the need for the rezone is to allow the existing Haggen store to expand to meet the changing nature of the area and to be able to provide a needed commercial resource. The Fairhaven District has seen an increase in residential uses during the past several years and having the grocery store at this location is in the public's interest. However, the Planning Commission finds that without the vacation of 13th Street, an expansion project may not be feasible. Therefore it cannot be found that the rezone of existing single family land is in the public's interest. Also see staff's response to Comprehensive Plan Amendment review criteria 2. b.

b. The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

c. The rezone will implement the policies of the comprehensive plan.

The policies of the Comprehensive Plan are broad and wide ranging. They identify guiding principles for both economic development and protection of single family neighborhoods. The existing store is appropriately located within the Fairhaven District, but at this time the Planning Commission finds that the rezone simply encroaches into a single family zone without clear...
measures to protect surrounding uses. Also see staff’s response to Comprehensive Plan Amendment review criteria 2. c. and 2. d.

II. CONCLUSIONS

Based on the staff report and the information presented at the public hearing, the Planning Commission concludes:

1. The request does not meet all the Comprehensive Plan and Neighborhood Plan amendment criteria in BMC 20.20.040 A. 2., and rezone criteria in BMC 20.19.030 A.

2. To fully determine that the proposal will not affect the public health, safety or general welfare of the community, a consolidated review of the Comprehensive Plan amendment, rezone, and street vacation, should be evaluated together.

3. As presented, there are too many unknown factors (13th street vacation/land use) to support a rezone and neighborhood boundary change without a site specific proposal.

III. RECOMMENDATIONS

Based on the findings and conclusions, the Bellingham Planning Commission recommends that the City Council deny the proposed Comprehensive Plan amendment and rezone request.

ADOPTED this 29th day of March, 2012.

[Signature]
Planning Commission Chairperson

ATTEST: [Signature]
Recording Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney