

ORDINANCE NO. 2020-12-038

AN ORDINANCE OF THE CITY OF BELLINGHAM RELATING TO THE BELLINGHAM COMPREHENSIVE PLAN, AMENDING THE AREA 1 POLICY NARRATIVE IN THE YORK NEIGHBORHOOD PLAN.

WHEREAS, the City of Bellingham has adopted neighborhood plans as a component of the Bellingham Comprehensive Plan, including the York Neighborhood Plan; and

WHEREAS, the City has a process to amend the comprehensive plan and the neighborhood plans once per year in accordance with Bellingham Municipal Code (BMC) 20.20 and BMC 21.10.150; and

WHEREAS, on April 1, 2019, the Planning and Community Development Department received a docketing application from the York Neighborhood Association requesting a comprehensive plan amendment to amend the subarea description for Area 1 of the York Neighborhood Plan; and

WHEREAS, Area 1 of the York Neighborhood Plan is zoned for industrial development and consists of three separate ownerships. None of the property owners signed the docket request; and

WHEREAS, on June 20, 2019, the Planning Commission held a public hearing regarding the 2019-2020 docket requests and recommended to the City Council that the proposed neighborhood plan amendment to Area 1 of the York Neighborhood Plan be placed on the annual 2019-2020 docket; and

WHEREAS, the City Council held a public hearing on August 26, 2019, and placed the proposed neighborhood plan amendment to Area 1 of the York Neighborhood Plan on the annual 2019-2020 list of comprehensive plan amendments; and

WHEREAS, on October 25, 2019, the applicant submitted applications for a neighborhood plan amendment and State Environmental Policy Act (SEPA) review; and

WHEREAS, the responsible official reviewed the proposed comprehensive amendments under the procedures of the SEPA, and a non-project Determination of Nonsignificance (DNS) was issued on September 22, 2020; and

WHEREAS, as required by RCW 36.70A.106 notice of the City's intent to adopt the proposed comprehensive plan amendments was sent to the Department of Commerce on September 22, 2020; and

WHEREAS, after notice was posted on site, mailed, and published as required by BMC Chapter 21.10, the Planning Commission held a public hearing on the proposed amendments on October 1, 2020; and

WHEREAS, the Planning Commission considered the staff report and comments received and thereafter made Findings, Conclusions and Recommendations that 1) the current neighborhood plan language should be retained; and 2) clarifying language proposed by Planning staff should be added to the Area 1 description; and

WHEREAS, the Planning Commission finds that the additional text proposed by staff meets all the Comprehensive/ Neighborhood Plan review criteria in BMC 20.20.040; and

WHEREAS, the Planning Commission further recommended that City Council direct staff to consider tools to implement the Area 1 policy language as adopted; and

WHEREAS, after notice was posted on site, mailed, and published as required by BMC 21.10, the City Council held a public hearing on the proposed amendments on November 9, 2020, and held one work session following; and

WHEREAS, the City Council considered the recommendation of the Planning Commission, the staff report, and the public comment; and

WHEREAS, the City Council finds that the additional text proposed by staff meets all the Comprehensive/Neighborhood Plan review criteria in BMC 20.20.040.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. The York Neighborhood Plan description for Area 1 is hereby amended as follows:

AREA 1

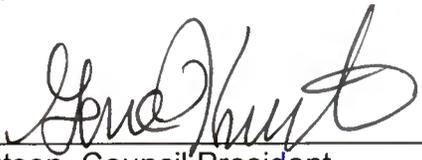
This area is generally located between Meador Street and Whatcom Creek and is bisected by James Street. Property on the west side of James Street is currently owned by the Bellingham School District (BSD) and is occupied by its bus maintenance and storage facilities. Land on the east side of James Street is largely owned and occupied by an auto dealership, with a smaller parcel at the street intersection occupied with offices.

As ownerships change, the possibility of the City acquiring property along Whatcom Creek should be pursued for open space, trail, park and riparian corridor purposes. At such time, respectively, rezoning the property to allow uses and site designs that are more compatible with the adjacent creek should be considered such as street front transit-oriented development with dedication of public open space adjacent to the creek.

To achieve the open space, trail and public access goals for this stretch of Whatcom Creek, the City should actively seek out opportunities to make improvements. This could be done through selective purchase or dedication of property or easements. Future redevelopment in the area shall be completed consistent with all applicable code and Shoreline Master Program requirements.

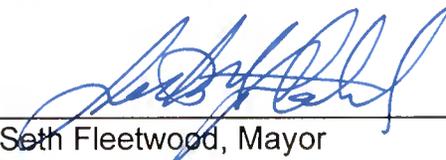
Section 2. The City Council adopts the Planning Commission's Findings, Conclusions, and Recommendations, attached as EXHIBIT A.

PASSED by the Council this 14th day of December, 2020



Gene Knutson, Council President

APPROVED by me this 17 day of December, 2020



Seth Fleetwood, Mayor

ATTEST: 

Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: December 18, 2020

EXHIBIT A

BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

OCTOBER 1, 2020

SUMMARY

Following the public hearing and deliberation on the proposed amendments to the Area 1 description in the York Neighborhood Plan, the Bellingham Planning Commission has determined that the existing neighborhood plan language is sufficient to identify the goals for the area. The clarifying text proposed by staff should be added to the existing plan language for Area 1.

I. FINDINGS OF FACT

1. Proposal Description:

On behalf of the York Neighborhood Association (YNA), Tom Scott, President of the YNA submitted a request for a Comprehensive and Neighborhood Plan amendment to modify the sub-area description of Area 1 of the York Neighborhood Plan. Land within Area 1 consists of three ownerships: 1) the Bellingham School District bus storage yard with service buildings and office building, 2) auto dealership with service shop, and 3) a commercial office building. None of the three signed onto the amendment request.

In summary, the applicant has identified that the proposed text amendments are intended to further clarify the current sub-area language for Area 1, which encourages the City to possibly acquire the industrial lands as ownership changes in Area 1 along Whatcom Creek and/or obtain easements as redevelopment occurs. The proposal also provides some guidance for future opportunities for multi-family zoning along the northern side Meador Avenue. The current subarea description is shown below:

AREA 1

This area is generally located between Meador Street and Whatcom Creek and is bisected by James Street. Property on the west side of James Street is currently owned by the Bellingham School District (BSD) and is occupied by its bus maintenance and storage facilities. Land on the east side of James Street is largely owned and occupied by an auto dealership, with a smaller parcel at the street intersection occupied with offices.

As ownerships change, the possibility of the City acquiring property along Whatcom Creek should be pursued for open space, trail, park and riparian corridor purposes. At such time, respectively, rezoning the property to allow uses and site designs that are more compatible with the adjacent creek should be considered such as street front transit-oriented development with dedication of public open space adjacent to the creek.

AREA 1 LAND USE DESIGNATION: INDUSTRIAL

The applicant's proposed amendments to the second paragraph of the Area 1 description are shown in legislative format with additions underlined and ~~deletions struck out~~:

The City should actively encourage ~~As~~ ownerships change, ~~and~~ the possibility of the City acquiring property along Whatcom Creek should to be pursued for open space, trail, park and riparian corridor purposes. ~~At such time, respectively, rezoning the property(s) to allow uses and site designs that are more compatible with the adjacent creek.~~ The pre-existing, non-conforming uses along a Critical Area Ordinance protected waterway should be revised. The City should consider getting additional easements in the Whatcom Creek area. ~~and~~ single Opportunities for multi-family zoning and Infill Housing forms should be considered along the northern side of Meador Avenue, such as street front transit oriented development with dedication of public open space adjacent to the creek.

A couple aspects of the proposal are technically not correct as follows:

- 1) Whatcom Creek is not a "Critical Areas Ordinance protected waterway". Development along Whatcom Creek is regulated by Bellingham Municipal Code (BMC) Title 22 Shoreline Master Program, not BMC 16.55 Critical Areas.
- 2) Area 1 is zoned light industrial and the uses on the properties are all permitted outright per BMC 20.36.030 (non-nonconforming uses). The uses consist of a Bellingham Public Schools (BPS) bus storage yard with a bus garage, service building, and office building; auto dealership with service shop; and a commercial office building. Though the uses in Area 1 are permitted, portions abutting Whatcom Creek are nonconforming to development standards, specifically shoreline buffers, regulated under BMC Title 22 – Shoreline Master Program. The required buffer width in this reach of Whatcom Creek is 100-feet. The existing developments are non-conforming because they are as close as 25-feet from Whatcom Creek. Prior to the 2013 update of the Shoreline Master Program, the required buffer width along Whatcom Creek downstream of I-5 was only 25-feet.

Also notable, the City typically does not intervene in property ownerships. We would, with any significant redevelopment proposal, look for opportunities to make improvements along Whatcom Creek. Though not regulatory, adding a statement that "The City should actively encourage ownerships change" can appear heavy handed and lead to a degree of uncertainty for current property owners. This language is not appropriate for inclusion in the neighborhood plan and should be left out. The current property owners are using their property in conformance with the existing industrial zoning.

Lastly, the second sentence in the amended paragraph is an incomplete sentence.

Note that subarea descriptions like the one for Area 1 provide general descriptions of existing conditions and policy direction for future actions. In general, subarea descriptions have no direct regulatory effect. Similarly, the proposed amendments will have no regulatory effect.

2. Background Information/Procedural History:

The applicants submitted a docketing application on April 1, 2019. The Planning Commission recommended the application be docketed on June 20, 2019, and Council docketed the proposal on August 26, 2019 (Resolution #2019-24). The York Neighborhood Association submitted a request for a Comprehensive and Neighborhood Plan amendment to modify the sub-area description of Area 1 of the York Neighborhood Plan.

On October 1, 2020 the Planning Commission held a public hearing on the proposed neighborhood plan amendments.

3. Public Comment:

Notice of the Planning Commission hearing was mailed to neighborhood representatives, associations, and other parties with an interest in this topic, and to owners of the properties within Area 1. The notice was also published in the Bellingham Herald. Additionally, a hearing notice sign was posted at the NE corner of Meador Avenue and James Street, and a second was posted at the WTA bus stop on Meador Avenue at the east Bellingham School District bus barn entrance.

The York Neighborhood Associations held a neighborhood meeting on October 9, 2019 to discuss the proposal. Approximately 15 people were in attendance including a representative from Bellingham Public Schools and the owner and manager of Bellingham Ford Lincoln auto dealership. There were no strong opinions expressed in favor or against the proposal given that it was not changing the zoning, would not result in any new regulations, and would have no regulatory effect.

No written public comments were submitted prior to the public hearing, however public testimony was taken at the Planning Commission hearing and the Commissioners duly considered it.

4. State Environmental Policy Act (SEPA) Determination:

A non-project SEPA Determination of Non-Significance (DNS) (SEP2019-0054) was issued on September 22, 2020. Notice was mailed to the appropriate agencies and published in the Bellingham Herald and on the City's website.

5. Consistency with the Bellingham Comprehensive Plan and Review Criteria:

Bellingham's neighborhood plans must be consistent with and carry out the goals and policies of the comprehensive plan. In addition, neighborhood plan amendments must be consistent with the factors and review criteria in BMC 20.20.040. Relevant comprehensive plan goals and policies and the review criteria were included in the Planning Commission's consideration of the proposed neighborhood plan amendment as follows:

Comprehensive/Neighborhood Amendment Criteria **BMC 20.20.040 - Decision Criteria**

BMC 20.20.040 requires the Planning Commission to consider the following decision criteria when reviewing Comprehensive Plan amendments.

- A. There exists an error, omission or inconsistency in the pertinent Comprehensive Plan or neighborhood plan provision; OR*
- B. All of the following criteria have been met:*
 - 1. The proposed amendment is consistent with the Growth Management Act and other applicable laws;**

Staff finds that the current policy direction in the neighborhood plan is sufficient to address the goals of the State Growth Management Act (GMA). It also provides notice to property owners in Area 1 that the City may consider zoning that would allow compatible land uses, including residential development. Relevant GMA goals include the following:

- Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- Encourage the availability of affordable housing to all economic segments of the population of this state.
- Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state;
- Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities;
- The goals, objectives, policies and regulations within the City's Shoreline Master Program.

Staff finds that approval of the proposed language is not needed for consistency with the State Growth Management Act goals and the Shoreline Master Program for the area. The Open Space section of the neighborhood plan already provides clear policy direction.

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

The York Neighborhood Plan (YNP) was initially adopted in 1980. Since that time, the Washington State Growth Management Act and City-wide plans and policies supporting infill development have been adopted. Various sections of the YNP have been updated since the plan's first adoption, including a comprehensive update of the plan in 2010 (Ord. No. 2010-12-077) which included amending the current language for the Open Space section and the Area 1 description.

Staff finds that the existing language in the neighborhood plan provides clear policy direction with respect to goals for the area. The revised language submitted by the YNA doesn't improve clarity, and in fact may create uncertainty for current property owners. The current plan language is consistent with the goals and policies of the City's comprehensive plan, including the following policies:

- LU-68: Through redevelopment opportunities, promote the restoration of streams, creeks and other environmentally-sensitive areas. Improve public access to these sites (when appropriate) and educate the public about their benefits.
- CD-31: Ensure that new infill development contributes positively to the quality of the surrounding corridor or neighborhood, including the potential to provide additional

opportunities for parks and other public spaces that are proportionate to the scale and impact of the subject project.

- CD-47: Consistent with the Environment Chapter and PRO Plan, require or incentivize the connection and linkage of parks, neighborhood greenways, trails, open spaces and greenbelts in new development and redevelopment projects.
- EV-25: Protect and restore habitat through policies, regulations, programs, and incentives.

Staff finds that the existing text in the neighborhood plan is sufficient to address the goals and policies in the City's comprehensive plan.

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

Staff's believes that the current plan language provides guidance regarding potential City acquisition of land and/or easements in the area for public purposes. It also provides notice to property owners in Area 1 that other land uses including multifamily development via a property owner submitted rezone proposal would be considered. A rezone of the area would need to be carefully considered, as it could result in a loss of industrial zoned land. Therefore, any proposed rezone and redevelopment proposal should help restore environmental functions to Whatcom Creek and result in redevelopment with compatible uses and site design under the Shoreline Master Program.

Staff finds that the current neighborhood plan language is sufficient to address long-term goals for the area.

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

The area is served by existing utilities, such as sewer and water, and public services such as police, fire, schools, transit and parks.

Staff finds no evidence to suggest that approval of the neighborhood plan amendments as submitted will adversely affect the public health, safety, or general welfare. The proposed amendments would have no regulatory effect. Existing uses can continue operating and any future expansion or redevelopment under the existing industrial zoning would be regulated under BMC Title 20 – Land Use Ordinance, and BMC Title 22 – Shoreline Master Program (SMP), whichever is more restrictive. Similarly, redevelopment of the properties within Area 1 under any potential future rezone would also be subject to the SMP. Site design and compatibility issues will further be addressed through the land use permitting process, including the design review process, if applicable.

Staff finds this criterion has been met.

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

Not applicable. This proposal does not include a rezone.

The current neighborhood plan policy language in the Open Space section and in the Area 1 description generally define City goals for the area. Additional language could be added to the Area 1 description that would identify ways to accomplish the goals. If properties are available for sale, for example, selective purchases of property or easements could be made as a way to implement the plan. The City will also require redevelopment to occur consistent with code and SMP requirements.

Staff recommends retaining the existing neighborhood plan text and adding the following to the Area 1 description:

To achieve the open space, trail and public access goals for this stretch of Whatcom Creek, the City should actively seek out opportunities to make improvements. This could be done through selective purchase or dedication of property or easements. Future redevelopment in the area shall be completed consistent with all applicable code and Shoreline Master Program requirements.

The Planning Commission finds that adding this language to the Area 1 description would achieve consistency between the description section and the open space section of the neighborhood plan. This amendment satisfies the Comprehensive/Neighborhood Plan amendment decision criteria in BMC 20.20.040 in that it is consistent with and will help achieve the comprehensive plan goals and policies, it will result in long-term benefit to the community and is in the community's overall best interests, and it will not adversely affect the public health, safety or general welfare.

II. CONCLUSIONS

The Planning Commission concludes the following:

- 1) For reasons outlined in the findings above, the York Neighborhood Association's proposed amendments to the Area 1 description in the York Neighborhood plan do not meet the Comprehensive/ Neighborhood Plan amendment decision criteria in BMC 20.20.040. Changes to the text proposed by the applicant don't add clarity and should not be included in the plan. The current plan language is sufficient to identify the goals for the area.
- 2) The text proposed by staff to be added to the end of the Area 1 description provides additional clarity with respect to future actions that the City could take to implement the plan's goals. This amendment satisfies the Comprehensive/Neighborhood Plan amendment decision criteria in BMC 20.20.040.

III. RECOMMENDATIONS

Based on the findings and conclusions, the Planning Commission recommends that the City Council retain the existing plan language and include the clarifying language proposed by staff as shown above.

The Planning Commission further recommends that Council direct staff to consider tools to implement the policy language as adopted.

Mike Coste

Planning Commission Chairperson

Deborah...

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Alan...

City Attorney