

RESOLUTION NO. 2012-25

**A RESOLUTION DENYING A PROPOSED COMPREHENSIVE PLAN AMENDMENT AND REZONE FOR PORTIONS OF AREAS 5 AND 13 OF THE KING MOUNTAIN NEIGHBORHOOD, AND ADOPTING SUPPORTING FINDINGS OF FACT, CONCLUSIONS AND DECISION.**

**WHEREAS**, Ralph Black, on behalf of the property owners Alliance Properties 2000 LLC, submitted a request for a site-specific comprehensive plan amendment and rezone to change the land use designation and zoning for a 130-acre site in the King Mt. Neighborhood, commonly known as the King Mt. Urban Village property; and

**WHEREAS**, the requested amendments would change the comprehensive plan land use designation from single family residential and multifamily residential to Urban Village, and change the zoning designation from Residential Single and Residential Multi, Planned, to Urban Village; and

**WHEREAS**, the subject property was approved for annexation by the City Council in 2009 with the understanding that the property owners would produce an urban village master plan and implementing regulations consistent with the policy direction established in the 2006 Bellingham Comprehensive Plan, the King Mt. Neighborhood Plan, the concomitant agreement, and the representations made by the property owners to the Whatcom County Council when the property was added to the city's urban growth area, and to the Bellingham City Council during the annexation review process; and

**WHEREAS**, after mailed and published notice as required by Bellingham Municipal Code (BMC) Chapter 21.10, the Planning Commission held a public hearing on February 23, 2012 to review the proposal; and

**WHEREAS**, the Planning Commission considered the staff report and comments received and thereafter made Findings of Fact, Conclusions, and a Recommendation for approval of the proposed amendments by a vote of 4-3; 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 July 2, 2012 and a work session on July 23, 2012; and

**WHEREAS**, the City Council considered the recommendations of the Planning Commission, the information and recommendations in the staff report, and comments

received at the public hearing and in writing, and on July 23, 2012 voted to direct staff to prepare a resolution and findings of fact and conclusions denying the requested comprehensive plan amendments and rezone.

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

The City Council hereby denies the proposed King Mt. Urban Village comprehensive plan amendment and rezone requested by Alliance Properties 2000 LLC., and adopts the findings of fact, conclusions and decision document, attached as Exhibit A.

**PASSED** by the Council this 6th day of August, 2012.

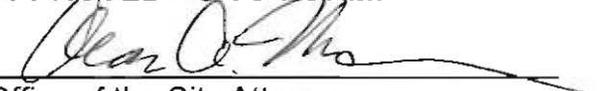
  
\_\_\_\_\_  
Council President

**APPROVED** by me this 8th day of August, 2012.

  
\_\_\_\_\_  
Mayor

**ATTEST:**   
\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

**EXHIBIT A**

King Mt. Urban Village Comprehensive Plan Amendment  
And Rezone

City Council Findings of Fact, Conclusions and Decision

# BELLINGHAM CITY COUNCIL FINDINGS OF FACT, CONCLUSIONS, AND DECISION

## KING MT. URBAN VILLAGE MASTER PLAN

AUGUST 6, 2012

### **Summary**

Ralph Black, on behalf of the property owners Alliance Properties 2000 LLC, submitted a request for a site-specific comprehensive plan amendment and rezone to change the land use designation and zoning for a 130-acre site in the King Mt. Neighborhood, commonly known as the King Mt. Urban Village property; and

The requested amendments would change the comprehensive plan land use designation from single family residential and multifamily residential to Urban Village, and change the zoning designation from Residential Single and Residential Multi, Planned, to Urban Village.

Following the public hearing and deliberations on the King Mountain Urban Village proposal, the Bellingham City Council has determined that the proposed changes fail to satisfy the comprehensive plan amendment review criteria (BMC 20.20.040 A2) and the rezone review criteria BMC 20.19.030 A.

### **I. Findings of Fact**

#### **1. Project or Proposal Description**

The applicant requests adoption of the King Mountain urban village master plan and development regulations for the subject property. This would require creation of a new subarea, Area 16, in the King Mountain Neighborhood Plan. The proposal would also require modifying the boundaries of Areas 5 and 13. The land use and zoning designations would be changed to "Urban Village". The neighborhood plan would be amended to include the King Mount Urban Village master plan, dated April 20, 2012. BMC 20.37.020 would be amended to include a new section, F., containing the King Mountain Urban Village development regulations, dated April 20, 2012.

#### **2. Background Information/Procedural History**

##### **Annexation**

The subject property was included in the Van Wyck/James Street annexation area, which encompassed approximately 233 acres and was annexed into the City in September 2009 by Ordinance No. 2009-08-054. As a condition of annexation, property owners within the annexation areas were required to fulfill two requirements. These requirements included:

1. Each of the nineteen property owners agreed to purchase or transfer a development right for every five acres of land annexed into the City by executing a covenant to purchase or transfer development rights.
2. Alliance Properties Inc., through Concomitant Agreement #2009-0459, was required to prepare and submit an urban village master plan and development regulations for review by the City.

Both annexation requirements have been met.

#### Comprehensive Plan Amendment Docket

In 2010, the City Council docketed the applicant's proposed comprehensive plan amendment and rezone for review.

#### Application Submittal

The urban village master plan proposal and associated comprehensive plan amendment and rezone applications were submitted on April 18, 2011.

#### Planning Commission Review

After mailed and published notice as required by Bellingham Municipal Code (BMC) Chapter 21.10, the Planning Commission held a public hearing on February 23, 2012 to review the proposal.

The Planning Commission considered the staff report and comments from the applicant and other members of the public received at the hearing and in writing and thereafter made Findings of Fact, Conclusions, and a Recommendation for approval of the proposed amendments by a vote of 4-3.

#### City Council Review

The Council held a duly noticed public hearing on July 2, 2012 and a follow-up work session on July 23 and August 6. The Council considered the complete record established during the review process, including the Planning Commission's findings, conclusion and recommendations, the staff report, comments and letters from the applicant and the applicants representatives, and comments and letters from the public.

### **3. Public Comment**

#### Neighborhood Meeting

A neighborhood meeting was held at the First Christian Church, 495 West Bakerview Road, on September 30, 2010. At least 25 people attended the meeting. The discussion included questions regarding vehicular and pedestrian circulation, availability of transit service, and anticipated level of commercial development.

#### Pre-application Conference

City staff reviewed this proposal with the property owners and their representative at a pre-application conference on December 21, 2010.

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

A non-project SEPA determination of Non-Significance was issued by the City of Bellingham on February 8, 2012.

#### **5. Consistency with the BMC Comprehensive Plan Amendment Review Criteria and the BMC Rezone Review Criteria**

Comprehensive plan amendments must be reviewed in a Type VI process using the criteria in BMC 20.20.040.A.2. Rezone proposals must be reviewed using the criteria in BMC 20.19.030.A. The review criteria and the City Council's findings are addressed as follows:

##### **Comprehensive Plan/Neighborhood Plan Amendment Decision Criteria BMC 20.20.040.A.2**

##### **2a. The proposed amendment is consistent with the Growth Management Act and other applicable laws;**

According to the applicant's proposal, the site would be developed with a mix of land uses and housing types at urban densities. Infrastructure improvements would be made by the applicant as development occurs. Environmentally sensitive areas would be preserved. Land for open space and trail connections would be dedicated. As a result, and provided this development actually occurs as presented, the Council finds that the applicant's proposal is generally consistent with the State Growth Management Act.

The Council notes, however, that there is nothing in the master plan or development regulations that would require the area to be developed as presented.

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

In 2006, the City adopted a comprehensive plan that has as a core philosophy a growth management strategy to accommodate future population growth. This strategy has three components: 1) establishment of urban villages; 2) infill in existing neighborhoods; and 3) annexation of portions of Bellingham's urban growth area (UGA) appropriate for urban development.

The Planning Commission found that the proposal satisfies Criteria 2b because it provides an opportunity to address both the comprehensive plan's urban village and UGA growth accommodation strategies. Other comprehensive plan goals such as promoting mixed use development and a diversity of housing forms could also be addressed in the proposal.

The City Council disagrees with the Commission's finding for two main reasons. First, as noted by City staff in their February 23 report to the Planning Commission, the urban village "master plan" as submitted by the applicant is not really a plan at all. It includes a "vision" for the village and a general "bubble diagram". Policies in the proposed plan (not legal requirements) address site and building design, circulation, parks and open space, capital facilities, and a general phasing plan. As staff noted in their report, the plan would need significant modifications in order to ensure that an urban village would be developed in a way that would reflect the intent and requirements for a master plan as specified in the city's comprehensive plan. Staff also noted that the applicant's plan fails to meet the requirements added to King Mt. Neighborhood Plan (a component of the comprehensive plan) when the property was annexed in 2009. The neighborhood plan clearly specifies the requirements for the urban village plan:

*A master plan is required for the urban village. This plan should identify an appropriate mix of land uses and densities, street and utilities layout, lot arrangement, housing types, potential village square and plaza locations, streetscape amenities, building types and their relationship to the street, parking structures or lots, protection of critical areas, pedestrian and bicycle facilities, and other items deemed necessary through the master planning process.*

Examples where the Council finds that the plan falls short of meeting the standards in the comprehensive plan, neighborhood plan and concomitant agreement include:

1. The applicant's urban village master plan is a basic diagram, lacking the details needed to ensure that the development proceeds in accordance with the comprehensive plan, neighborhood plan, concomitant agreement and representations by the applicant to the Planning Commission and City Council.
2. The lack of a development phasing plan that would ensure that the development, including the dedication of land needed for roads and other infrastructure, construction of infrastructure, dedication of open space and trail corridors, etc., actually occurs as proposed. Because a certain level of development with each phase is not specified, there are no controls to prevent the residential areas from developing entirely with single family housing at low densities based on short term market conditions.
3. No minimum density, minimum number of dwelling units, or maximum lot size is specified. Although the plan proposes a cap of 1,500 dwelling units, this is fewer than even the current zoning allows. Without a minimum density requirement, far fewer than 1,500 units could actually be built. Without a mix of housing types and maximum lot size requirements, the property could be developed entirely with large lot detached single family units. Without a required minimum number of units, it is possible that there would never be a population base sufficient to allow the commercial component of the urban village to be successful. No commercial

component means no urban village as envisioned in the comprehensive plan, neighborhood plan and concomitant agreement.

4. No mix of housing types is required. Although the applicant has touted the proposal as addressing the comprehensive plan goals related to housing affordability and mix of housing types, nothing in the plan or the development regulations requires a mix. Again, without this requirement, the property could be developed entirely with large lot detached single family units. Such a development would not further the comprehensive plan goals and policies.

The second reason the Council finds the proposal does not meet Criteria 2b is the applicant's stated position that the City Council does not have the authority under the concomitant agreement to add conditions to the approval of the proposal. In fact he has, in writing, threatened to sue the City if any conditions are attached to the comprehensive plan amendment and rezone. Without any legal assurance that the applicant will build what has been represented to the Planning Commission and Council, and without the ability to condition approval the proposal as argued by the applicants, the Council finds that the application would not advance the very comprehensive plan goals and policies the proposal purports to address. Therefore the proposal fails to satisfy Criteria 2b.

**2c. The proposed amendment will result in long term benefit to the community and is in the community's overall best interests;**

The Council also disagrees with the Planning Commission's findings under criteria 2c. As stated previously, the urban village master plan as submitted by the applicant is not really a plan but a vision and a general bubble diagram. It would need significant modifications in order to provide a regulatory framework that could be efficiently administered by City staff as development permits are reviewed. The lack of specificity in the plan and regulations would cause uncertainty for the developer, City staff and the public in terms of what could be built, what infrastructure improvement are needed and when, who is responsible for the improvements, etc. Approving the plan as submitted would lead to lengthy and inefficient development permit review processes as staff attempts to administer a plan that does not include the necessary components, or in some cases conflict with current City land use regulations. This would result in an inefficient use taxpayer funds. Therefore the Council finds that approval of the proposal as submitted is not in the community's best interests.

Additionally, absent any legal assurance that the actual development of the site will include an urban village, a range of housing types, dedication of land for open space, timely construction of needed infrastructure, and the other public benefits promoted by the applicant, the City Council finds that the proposal fails to satisfy criteria 2c.

**2d. The amendment will not adversely affect the public health, safety or general welfare; and**

Provided that infrastructure improvements are constructed to support the development, that critical areas on the site are protected from development impacts, and that dedication of land for public open space and trails actually occurs, the Council finds that the proposal will not adversely affect public health, safety or general welfare.

**2e. If a concurrent rezone is requested, the proposal must also meet the criteria for rezones in BMC 20.19.030.**

See below.

**Rezoning Criteria  
BMC 20.19.030 A**

**1. The proposal is consistent with the comprehensive plan or corresponds to a concurrent comprehensive plan amendment application.**

As stated in the Comprehensive Plan Amendment Review Criteria 2b section, there is no assurance provided in the master plan or development regulations that the actual development of the property will occur as required by the comprehensive plan, King Mt. Neighborhood Plan, concomitant agreement, and as presented by the applicant. Absent such assurances, and without the willingness of the applicant to accept any conditions, the Council finds that the proposal fails to satisfy this criteria.

**2. The proposed rezone will not adversely affect the public health, safety and general welfare.**

See the response and findings for Comprehensive Plan Amendment Review Criteria 2d.

**3. The proposed rezone is in the best interests of the residents of Bellingham.**

For the reasons stated under Comprehensive Plan Amendment Review Criteria 2c, the Council finds that the proposal is not in the best interests of the residents of the city. Therefore the proposal fails to satisfy this criteria.

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

As explained previously, the Council finds that the plan does not contain the necessary components and requirements needed to assure that the "urban village"

zoning designation would be implemented. Without significant changes, the proposal fails to meet this criteria.

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

Adequate public infrastructure is in place or will be extended by the developer as conditioned through review and approval of development plans and land use permits. The type and level of public services such as police, fire and emergency medical services) that might be required are dependent on the type of development that actually occurs on the site. Because the zoning proposed by the applicant allows such a wide range of uses, from single family homes on individual lots, to various forms of multifamily housing and commercial uses, the Council is unable to determine if adequate services are currently available. Therefore the Council finds that the proposal fails to meet Criteria 5.

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

See findings under Comprehensive Plan Amendment Review Criteria 2d.

**7. The proposal 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**
- 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 applicant argues that circumstances changed when the subject property was identified as a potential urban village site in the City's comprehensive plan. However, as stated previously, there is no assurance, based on the submittals by the applicant, that a true urban village as envisioned in the comprehensive plan, the King Mt. Neighborhood Plan, or the concomitant will actually be built on the site. Absent these assurances, the adoption of the comprehensive plan cannot be argued as a changed condition.

There has been no evidence presented to suggest that an error occurred when the current zoning was approved for the property in 2009. The property could be developed under the current zoning in a way that is consistent with most of the uses identified in the applicant's plan.

With respect to the proposal and implementation of the policies of the comprehensive plan, see the evaluation and findings under Comprehensive Plan Amendment Review Criteria 2b. The Council finds that the proposal fails to satisfy Criteria 7a,b and c.

## II. Conclusions

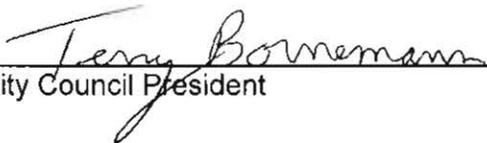
With respect to the King Mt. urban village comprehensive plan amendment and rezone proposal, the City Council concludes:

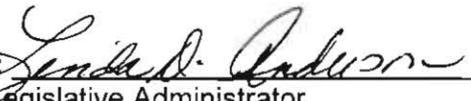
1. The documents submitted by the applicant provide no assurance that the urban village plan presented to Planning Commission and City Council would actually be built.
2. The proposed amendment to the King Mountain Neighborhood Plan fails to satisfy Comprehensive Plan Amendment Review Criteria.
3. The proposed rezone fails to satisfy rezone approval criteria.

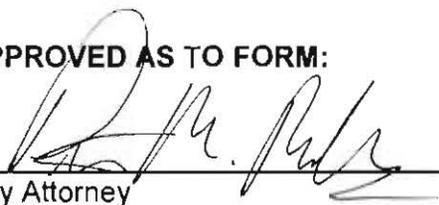
## III. Decision

Based on the record and these findings and conclusions, the King Mt. urban village master plan application for a comprehensive plan amendment and rezone is denied.

ADOPTED this 6<sup>th</sup> day of August, 2012.

  
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City Council President

for ATTEST:   
\_\_\_\_\_  
Council Legislative Administrator

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney