

4/24/18

Steven Sundin, Senior Planner
Bellingham Planning and Development Department
210 Lottie Street
Bellingham, WA 98225

To the Sacred Lummi Elders, the Honorable Mayor Kelli Linville, Hearing Examiner Sharon Rice, Members of Bellingham City and Whatcom County Councils, Planning Officials of Bellingham, Community Members –

May these comments inspire the entire planning department, and, in particular, Senior Planner Steven Sundin—in whom we are asked to put our faith—to approach the development proposed by Developer Derek Stebner (DR2018-0009/CAP2018-0012/SUB2018-0012) with a new lens so Bellingham's reputation endures as being a city whose officials truly "walk their talk" in upholding environmental protection of designated salmon spawning streams, sensitive/critical areas, and active wetlands.

In keeping with our city's intention to act with integrity, and our charge as human beings to be honorable stewards of our natural environment, I request that this development proposal be the first in Bellingham's history to be denied in its entirety for a multitude of reasons, some of which are listed here (see more extensive rationale in pages to follow bullet points):

- This is a Chinook salmon stream with evidence of their increased return. Wetlands are present and established inside the 75 foot setback. Critical Areas recommendations on which this buffer is based are relying on outdated reports and data, therefore Developer Derek Stebner's project proposal is out of compliance with 2018 Wetland and CAO standards.
- Developer Derek Stebner can NOT access his property without seeking a request for departure from an already relaxed set of infill toolkit regulations. Project involves a designated recently day-lit salmon stream and inner-urban greenways trail atop a critical geologically hazardous area on a steep slope with evidence of a wetland inside the minimum 75 foot setback. The project does NOT meet items #2 and #3 in the list of criteria stated in BMC20.28.030.B and therefore the departure should be denied. **It is not City Planners' responsibility to bail out a developer who makes a poor investment choice.**
- A second professional geological engineering team that is NOT hired by the developer, and a wetland specialists who knows and cites 2018 Wetlands regulations is crucial in determining setbacks/buffers, environmental impact, and safety of this geologically/ecologically complex development project.
- If developers can seek departure and adjustments to policy, I also request an adjustment: that (although this is not a Type III project), it be fully scrutinized and critically reviewed by Hearing Examiner Rice. A second project review is definitely needed for a site that a Senior Planner repeatedly refers to as, "THAT Complicated!" (quotes, S.Sundin)
- A lot line adjustment is being sought and should be denied. The project's square footage exceeds density by 814 square feet, is not "reasonable" in its footprint, and is out of character with neighboring homes.

- The opportunities for mitigation of critical area impact is limited due to site conditions, and is implausible due to excessive footprint of Townhomes.

1) Wetlands / Critical Areas recommendations are relying on outdated Reports/Data — Project proposal is out of compliance with current Wetland and CAO standards

All new CAO reports use updated/upgraded 2016 wetlands standards and guidelines. The data by which a minimum 75 foot buffer is being considered is based on outdated CAO reports (2014 & 2006) which do not comply with 2016 wetlands standards and guidelines. Therefore, present recommendations to Derek Stebner's Langstan Management, LLC's proposal (DR2018-0009/CAP2018-0012/SUB2018-0012) are NOT using current wetlands and Critical Areas standards and guidelines; its recommendations are invalid. Environmental science observes that wetlands are ever-changing. All new reports use updated ratings which include how well a wetlands is functioning.

An active wetland* is currently present in a secondary stream channel inside this 75 foot buffer; a full-field and comprehensive 2018 CAO report including updated wetland standards is crucial, and important. With healthy wetlands confirmed, this proposal's feasibility will be found to be unsound and illegal.

The critical areas reports prepared by Katrina Jackson (letter: March 8, 2018—citing 2014's report) and Ed Miller (2014/2006) do NOT note the presence of a potential Category II wetland (based on vegetation and inundation) present along the base of the slope that extends from proposed building footprint to Padden Creek floodplain (described in the report prepared by MTC). The report prepared by MTC *does* present this: “At profile B-B’, the upper slope gradient is roughly 32 degrees for about 19 feet down to a 5-foot wide primitive trail and slope break. The lower slope then continues to the Padden Creek floodplain at 30 to 35 degrees, *with some indication of an abandoned or flood-stage flow channel near the toe of the slope.*”

On 4/17/2018 I observed water, skunk cabbage and drenched muddy soils along the length of the base of the slope within the same areas described by MTC (no longer an "abandoned" flow channel). I took photos and video to document my observations of evidence of wetlands. Appropriate buffers for quality wetlands should be applied.

*** I request that prior to granting ANY permits, COB attain a full-field comprehensive and current 2018 CAO report which takes into account my findings (video and photos), uses current wetlands standards (2016), and seeks professional/scientific data from a second environmental service rather than the firm referenced above, in order to offer two (2) professional opinions.**

2) One Planner's Subjective Decision — 75 foot Setback: What is the scientific rationale?

This development is essentially being decided by one person, Senor Planner Steven Sundin, without an opportunity for scrutiny and oversight by our esteemed Hearing Examiner, Lummi Elders, and Dept. of Ecology/Washington State Fish and Wildlife (State government is relying on city governments to honestly uphold regulations. Is one person sufficient to decide the permanent outcome to a complex project overlooking a designated recently day-lit salmon stream and inner-urban greenways trail atop a critical geologically hazardous area on a steep slope with evidence of a wetland inside the minimum 75 foot setback? Neighboring homeowners

were held to a moderate 100 foot setback; Developer Stebner should be held to the same restrictions.

- After confirming data from an updated 2018 CAO report which will find the same wetlands present that I, and others, have documented with photographs and video (inside the 75 foot setback), if the City of Bellingham is fearful of being accused of "takings" (the authority to condemn or take private property under the Fifth Amendment of the Constitution for a wide variety of public benefits), I propose to COB Planning, and to Mayor Linville to stand in courage to do something unprecedented: honor Derek Stebner for purchasing and preserving six lots of salmon stream, encourage him to acknowledge the environmental impact he has in this city, and to thank him for donating his parcels to Greenways. His reputation in this town will shift, and the salmon will rejoice.
- Due to re-zoning, this property now falls under the "more flexible regulations" as allowed by the city's infill toolkit, yet Developer Stebner is seeking MORE flexibility (see Alley access). When wetlands are correctly charted with updated 2016 criteria, Planners and City Officials will find that the buffer actually shrinks considerably and renders the buildable area of this project unfeasible.

Nevertheless, I request Planner Sundin to please state your exact criteria and rationale by which you, as a senior planner with shoreline expertise, are considering to grant a minimum 75 foot setback/buffer rather than one more moderate in the range designated in the infill toolkit (75 feet — 150 feet).

Your (Planner Sundin) reply to a community's elder asking if this 75 foot setback was arbitrary (and I quote you directly) was: *"75 (setback) is not arbitrary - we depend on qualified pros to provide us with reports / data we need to determine code compliance."* May I remind you, Planner Sundin, here —as citizens, peers, councils, and Mayor Linville who has a right to be proud of her work in completing a million dollar day-lighting project on *this* very salmon stream—that your "qualified pros" were hired by the developer, and are citing critical areas reports based on outdated wetlands, geological, and critical areas reports which therefore do NOT reflect CURRENT conditions and regulations, and thereby affects your subjective determination as to whether or not a 75 foot setback is scientifically proven to be within code compliance.

3) Geological Hazard — It is shocking that COB's Planning Dept. has NO Geologist on Staff

An updated 2018 Geo-hazardous report that does not rely so heavily on a report conducted in 2006, is in order. In 2006's report prepared by MTC, it is noted that the slope on proposed site is indeed a "geologic hazard" area. " The City of Bellingham Municipal Code 16.55.410 defines geologically hazardous areas of known or suspected risk. COB's Development and Design Standards offer its citizens this rule: "Ensuring development is **safe** and fits well with adjacent properties."

MTC also notes that complex geotechnical engineering will be needed for design of the building foundation "Therefore the recommendations pertaining to foundation design and construction in relation to the native subgrade are still applicable. However, the extensive uncontrolled fills present a difficulty that must be addressed from a geotechnical engineering perspective if near-grade construction is proposed." (MTC report)

I also request a second (alternate) geological team to conduct this assessment so as to offer up a second opinion with regards to data discovered. There is evidence that large amounts of fill comprise the land on which these Townhomes are proposed. The ground is uneven - hummocky; the uplands are higher than the adjacent area to the west; the upland slope differs from surrounding area and has depressions; the uplands contain abundant construction debris: scrap metal, iron, and concrete (old rusty car bodies have been discovered in fill nearby); the adjacent slope above the creek is far more steep than it would be naturally; the slope bulges towards the creek with a convex instead of a natural concave profile (such as the adjacent slopes to the west); the slope to the east of this parcel also appears to have been extensively filled.

4) Hearing Examiner Review

Planner Sundin, you have stated early on and emphasized again and again that this project is (and I quote you directly): "THAT complicated!" Therefore, anything that is "THAT complicated" deserves more than one planner* acting as judge and jury, making such long-lasting and environmentally critical decisions. With due respect, even if a planner is an "expert," his/her subjective opinion about setback regulations and interpretation of scientific data (especially when the data is not current) is insufficient when it comes to a project overlooking a designated recently day-lit salmon stream and inner-urban trail atop a critical geologically hazardous area on a steep slope with evidence of a wetlands inside the minimum 75 foot setback.

***I request that this proposal be considered of special and critical interest and therefore be set before the Hearing Examiner even though this is technically a Type II proposal. I believe that Hearing Examiner Rice would find MUCH to be concerned about if she were to walk the site itself, witness the environment instead of reading a screen or a paper report, understand the history of this city's and neighbors' efforts to protect and daylight this salmon stream, and to hear the concerns of neighbors about the "safe and fits in well" offered us by our own city's rulebook.**

5) Alley Access — Project should abide by Infill Toolkit and Urban Village requirements

Meetings between you, Senior Planner Sundin and proposed project architects with neighbors during the past year never resulted in an honest clear answer detailing the rationale behind submitting this project under the 800/810 Larrabee address or even the address it is currently assigned (1507 and 1509 8th); now it is becoming clear why Developer Stebner is asking city planners to disregard this "street" "lane" requirement. Again, you, Planner Sundin, simply stated again and again: "It's complicated." I see why: (Citing the Permit Application Narrative): "The project is designed to meet the applicable Infill Toolkit criteria with the exception of one modification related to alley access."

BMC 20.28.030.B states:

B. Applicants may request minor modifications to the general parameters and design standards set forth in this chapter. The planning director or hearing examiner may modify the requirements if all of the following criteria are met:

- 1. The site is constrained due to unusual shape, topography, easements or sensitive areas.*
- 2. The modification is consistent with the purpose of this chapter.*
- 3. The modification will not result in a development that is less compatible with neighborhood land uses.*

"It is the applicants' belief that the proposed modification meet the three listed criteria above, for the following reasons.

1. The site is constrained due to unusual shape, required access easements and consolidated access from a private lane. This unique condition warrants modification from the two standards.

As discussed in this narrative the site is severely constrained by critical areas and there is no viable way to access a street or lane or construct a street or lane in the Larrabee Avenue right of way. The steep slopes and creek setback constrain development to the southeast corner of the site immediately adjacent to the alley. These critical areas create a clear unique site condition that impacts compliance with the frontage requirement.

2. The modification is entirely consistent with the purpose of the chapter. BMC 20.28.010, Purpose, states: *These regulations are intended to implement comprehensive plan goals and policies encouraging infill development, more efficient use of the remaining developable land, protection of environmentally sensitive areas, and creating opportunities for more affordable housing.*

The proposed modification will further this purpose. The modification will allow for the most efficient use of the property with the least environmental impacts. Alley access will allow more functional unit design and better utilization of the developable portion of the lot, with more open space and less environmental impact from each lot. Alley access will facilitate development of 2 new units in an Urban Village; while the density of this property is 7 units, it is not reasonable to request a higher density than two, but this design facilitates reasonable infill. Alley access will reduce new impervious surfaces by reutilizing existing infrastructure.

3. The modifications will not result in a development that is less compatible with neighborhood land uses.

The surrounding neighborhood land uses are residential with a mix of single family, duplex and triplex buildings, built over a period of one hundred or more years. Construction style varies for these buildings with older turn of the century homes, homes from the 50's and 60's, modern homes developed in the past 20 years, and eclectic designs. Most homes are 2 or 3 stories in height, with garage or surface parking access off of the alleys in the neighborhood. All the surrounding homes take garage or surface parking access off the alley.

The proposed modification will have almost no impact on neighborhood land uses. The alternative to alley access would be to construct a street or lane. This would not serve any neighboring property owners interest and would not be consistent with neighborhood land use development patterns. Utilizing the existing alley for access to two residential units, with enclosed parking garages, is consistent with applicable neighborhood land uses and development patterns.

" A departure from the requirements for a Townhouse to abut a street or lane is requested with this application"

" It is the applicants' belief that the proposed modification meet the three listed criteria above, for the following reasons.

1. The site is constrained due to unusual shape, required access easements and consolidated access from a private lane. This unique condition warrants modification from the two standards.

As discussed in this narrative the site is severely constrained by critical areas and there is no viable way to access a street or lane or construct a street or lane in the Larrabee Avenue right of way. The steep slopes and creek setback constrain development to the southeast corner of the site immediately adjacent to the alley. These critical areas create a clear unique site condition that impacts compliance with the frontage requirement.

This proposed development is directly accessible ONLY off an "alley," not a "street" or "lane" as is required by the Infill toolkit. *"Townhouse development is required to abut a street or lane and have an entrance that faces a street or lane. In this instance the adjacent street right of way runs down the center of Padden Creek and will never be developed. The only viable access to the properties is via the adjacent alley."* (BMC 20.28.030.B)

There is, was, and never has been a continuation of Larrabee Avenue into this property, and one can NOT access this property solely via 8th Street, even though the mailing address for proposed Townhomes is 8th Street. In actuality, the Townhomes are physically located off an ALLEY behind Donovan Ave. Developer Stebner bought six lots comprised mostly of salmon stream, trail, and wetlands. Period. I'm concerned about favoritism and subjective decisions that would disproportionately favor leniency of regulations and variances to benefit developers while at the same time applying more stringent rules to longtime residents. Public trust in our city officials is as important as and environmental stewardship. I suggest we hold Developer Stebner to the same standards, and rise together in consistent stewardship of our environment.

I do not agree that this project meets items two (2) and three (3) of the listed criteria as stated in BMC 20.28.030.B and quotes proposal:

#2. The modification is entirely consistent with the purpose of the chapter. BMC 20.28.010, Purpose, states: *These regulations are intended to implement comprehensive plan goals and*

policies encouraging infill development, more efficient use of the remaining developable land, protection of environmentally sensitive areas, and creating opportunities for more affordable housing.

This project is environmentally hazardous for all the reasons listed in my comments.
This project does not create affordable housing — this is an example of gentrification.

Developer Stebner's project narrative suggests:

"The proposed modification will further this purpose (of above criteria #2). The modification will allow for the most efficient use of the property with the least environmental impacts. Alley access will allow more functional unit design and better utilization of the developable portion of the lot, with more open space and less environmental impact from each lot. Alley access will facilitate development of 2 new units in an Urban Village; while the density of this property is 7 units, it is not reasonable to request a higher density than two, but this design facilitates reasonable infill. Alley access will reduce new impervious surfaces by reutilizing existing infrastructure.

Let's break this apart:

The modification will allow for the most efficient use of the property with the *least* environmental impacts. No. This development GREATLY impacts its surrounding environment — a designated salmon stream and wildlife corridor— by setting an excessive foundation on a geo-hazardous steep slope. The "least" is mentioned because Developer Stebner would have to design a boat on stilts in order to build anywhere else on his six lots. Furthermore, this report only claims it allows for "the most *efficient* use of the property" — it does so because THERE IS NO OTHER LAND TO BUILD ON except this incredibly tiny corner of fill dirt on a steep slope in the Southeast corner off the alley behind Donovan. The majority of square footage on ALL Developer Stebner's lots in this area is stream, slope, wetland, and an interurban trail. What he's referencing is the size of a postage stamp compared to all the water and unbuildable areas on these 6 lots.

Alley access will allow more functional unit design and better utilization of the developable portion of the lot, with more open space and less environmental impact from each lot.

There would be NO "more" functionality or "better" utilization of any design ANYWHERE ELSE on any of his 6 lots, because they're comprised of water and mud and an active wetlands. There is no 'there' there. The Emperor wears no clothes.

Alley access will facilitate development of 2 new units in an Urban Village; while the density of this property is 7 units, it is not reasonable to request a higher density than two, but this design facilitates reasonable infill.

If this is granted, this becomes a case of Planning compensating someone who took the risk of buying a critical areas rather than upholding environmental integrity. There is an active wetlands on a secondary channel at the base of the steep slope within the 75 foot setback. Again, It is not City Planners' responsibility to bail out a developer who makes a poor investment choice.

***I do not believe this project honestly and legally meets the criteria needed to grant Developer Stebner's request for departure. I therefore request that Planning DENIES this departure. Developer Derek Stebner should be held to the same restrictions to which his neighbors are held.**

Much more can be discussed on this request for departure, but I trust that Planner Sundin and perhaps the Honorable Mayor Linville along with Hearing Examiner Rice will concur after they see the land and stream, and the complexity of this proposal.

6) Reasonable sized building pad — not "reasonable" /out of character with neighboring homes

Permit application narrative states, "The project proposes a reduction of the 15' building setback from the critical areas buffer, which should NOT be granted. This area is not treed and through consultation with the project biologist it has been determined that this setback can be reduced as shown without impacting any critical root zones of adjacent trees. This reduction is also necessary to fit a reasonably sized building pad on the Property." This building pad and architecture belongs North of the salmon stream in Fairhaven Business District. Former Bellingham Mayor compared it to a "prison block." *Reasonable* is very subjective.

7) TWO side-by-side units — actually ONE conjoined structure w/ sq. footage exceeding density

Actual square footage of this project exceeds density in a T-2 Fairhaven Urban Village zoning area by 814 square feet. Even when broken into two "legally separate units" each unit exceeds the 2000 square footage density allowance. The proposal states, "The project will include a Lot Line Adjustment* to create two separate legal lots, one for each Townhouse unit."

The proposed building will include two side-by-side units and will be three stories in height. Proposed Unit A will be 2,318 square feet in total floor area and proposed Unit B will be 2,496 square feet in total floor area."

LOT LINE ADJUSTMENT

***This lot line adjustment should be denied. There isn't enough room for the building that is being proposed with all the site constraints. Furthermore, there is no visible separation of these two Townhomes, and therefore should be called what it is: one massive architectural structure divided by a common/shared wall. It is grossly out of keeping with homes directly south and east of proposed Townhomes (809 Donovan = 1781 square footage, and 815 Donovan = 1098 square footage), and does not contribute to the character of the neighborhood, but rather severely diminishes it.**

A reminder, according to COB Government Rules, homeowners have the right to be met with respectful development which directly citing COB's Development and Design Standards mandate, "Fits in well with adjacent properties."

This proposal attempts to hide its massive footprint, but its square footage still exceeds *reasonable*. ("The building will include façade modulation and articulation, variation in rooflines, and varied siding material to reduce the perception of bulk and mass, and to contribute to the character of the neighborhood." ~ Permit Application Narrative)

8) Padden Salmon Stream Day-lighting — State project: protected rather than compromised

Millions of dollars were spent on the Padden Creek restoration, where fish monitoring studies conducted between September 2015 and February of 2016 indicate an increase in Chinook, Chum, and Coho salmon returning to spawn. We, as human beings, can be more conscious and responsible than to allow a MIMIMUM setback from this recovering spawning stream. I trust that Planner Sundin will make a decision in alignment with the previous commitment to daylight

Padden Creek, and that he will send a message to our Lummi Elders, Bellingham's citizenry, and all who worked on this noble project that Bellingham officials continue to recognize the importance and sacredness of Salish salmon habitat.

9) Reasonable Economic Use and Impermeable Surface Maximization

On paper, this development *appears* to be using only 18% of the developer's land, when in reality, these two Townhomes comprise an extremely large footprint on the *only "buildable" land available* on all six lots; approximately 63% of his "buildable" land would be built upon. When one looks at the data, over 85% of his six lots are salmon stream, wetlands, or inner-urban trail. As it is currently proposed, this project's footprint is only 6% shy of reaching the maximum footprint the permissible amount of land to It would seem that Developer Stebner's desire to maximize his footprint is to capitalize and maximize his profit. "Reasonable" would shrink this footprint, allow for the stated vegetation mitigation to be implemented, and setbacks to fall within a compromising range (100 foot perhaps -- it is, after all midway between 75 and 150). However, the verdict is still out on just how close to the proposed development site is the viable wetlands.

10) Mitigation of Erosion

Useable area for building, construction, AND mitigation (such as planting of vegetation including evergreen trees) is severely limited within this site. Mitigation areas would be hard to find due to the hazardous conditions of the slope that make up the majority of the property, and the limited flat non-hazardous area located at the top of the slope that will be consumed by the structure of the building itself. If Developer Stebner cannot plant all the mitigating trees he is required to plant, he should have to shrink the footprint of his building or, again, he might be encouraged by planners to consider donating his land to Greenways.

Thank you for taking the time to thoroughly consider these comments with regards to Developer Derek Stebner's development on the alley behind Donovan Avenue on a critical areas overlooking a designated salmon stream. I have spent more than weeks than I ever imagined I could deciphering COB municipal codes, and learning about Washington State and City of Bellingham regulations, variances, salmon stream and wetland setbacks.

I submit these comments to my trusted officials, and have video and photos of this celebrated salmon stream, active wetlands, and beautiful neighborhood should any of you wish to have a more visceral and comprehensive understanding of this project which, I agree with Planner Sundin, is "THAT complicated!"

Thank you for upholding the reputation of environmental stewardship. I'd love to be present when Developer Stebner is honored with that Greenways plaque!

Sincerely,

Drue Robinson
809 Donovan Ave
Bellingham, WA 98225
Bellingham resident since 1984, homeowner since 1994