



City Council Agenda Bill

19483

Bill Number

Subject: Consideration of a resolution denying the Padden Trails comprehensive plan amendment and rezone.

Summary Statement: On June 18, 2012 the City Council voted 6-1 to direct staff to prepare a resolution and findings denying the Padden Trails comprehensive plan amendment and rezone proposal. Drafts of both a resolution and a findings of fact, conclusions and decision document are attached for Council's review.

Previous Council Action: June 18 direction to staff to prepare documents denying the proposal.

Fiscal Impact: N/A

Funding Source:

Attachments: Draft Council Resolution
Draft Findings of Fact, Conclusions and Decision

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Vote Requested	02-Jul-2012	Pass Resolution	Greg Aucutt, Senior Planner	5 min.

Council Committee:

Committee of the Whole
Terry Bornemann, Chair

Agenda Bill Contact:
Greg Aucutt 778-8344

Committee Actions:

Reviewed By	Initials	Date
Jeff Thomas, Director	JBT	6-22-2012
Legal	AKM	6/25/12
Mayor	KL	6/25/12

Council Action:

RESOLUTION NO. _____

A RESOLUTION DENYING A PROPOSED COMPREHENSIVE PLAN AMENDMENT AND REZONE FOR PORTIONS OF AREAS 5 AND 6 OF THE SAMISH NEIGHBORHOOD, AND ADOPTING SUPPORTING FINDINGS OF FACT, CONCLUSIONS AND DECISION.

WHEREAS, Free Spirit Enterprises LLC, on behalf of the property owners Padden Trails LLC, submitted a request for a site-specific comprehensive plan amendment and rezone to change the land use designation and zoning for a 113-acre site commonly known as the Padden Trails property; and

WHEREAS, the requested amendments would change the land use designation from single family residential, low density to multifamily residential, low density, and change the zoning designation from Residential Single, 20,000 square feet per unit to Residential Multi, Planned, 10,000 square feet per unit; 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 October 6, 2011 to review the proposed amendments; 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 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 March 12, 2012; and

WHEREAS, the City Council Planning Committee conducted a series of work sessions in April, May and June 2012, to review and evaluate the proposal; and

WHEREAS, the City Council considered the recommendations of the Planning Commission, the application materials submitted by the property owner's representatives, the information and recommendations in the staff report, and comments received at the public hearing and in writing, and on June 18, 2012 voted to deny the requested comprehensive plan amendment and rezone.

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

The City Council hereby denies the proposed Padden Trails comprehensive plan amendment and rezone requested by Free Spirit Enterprises LLP., and adopts the findings of fact, conclusions and decision document attached as Exhibit A.

PASSED by the Council this ____ day of July, 2012.

Council President

APPROVED by me this ____ day of _____, 2012.

Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

EXHIBIT A

**Padden Trails Comprehensive Plan Amendment
And Rezone**

**City Council Findings of Fact, Conclusions
And Decision**

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

"PADDEN TRAILS" COMPREHENSIVE PLAN AMENDMENT AND REZONE

JUNE 18, 2012

Summary

Property owner Padden Trails LLC submitted a request for a comprehensive plan amendment and rezone a site-specific comprehensive plan amendment and rezone to change the land use designation and zoning for a 113-acre site in the Samish Neighborhood.

The requested amendments would change the land use designation from single family residential, low density to multifamily residential, low density, and change the zoning designation from Residential Single, 20,000 square feet per unit to Residential Multi, Planned, 10,000 square feet per unit. The effect of the amendments would be to increase the allowed build-out of the site from 246 units to 492 units and allow multifamily and "infill tool kit" housing forms

After carefully considering the record, the public testimony, the recommendations of staff and the Planning Commission, the City Council finds that the proposal fails to satisfy the BMC decision criteria for a comprehensive plan amendment (BMC 20.20.040 A.2) and rezone (BMC 20.19.030 A.).

I. Findings of Fact

1. Project or Proposal Description

The proposal included the following components:

1. Changing the comprehensive plan land use designation of Area 6 from Single Family Residential to Multifamily Residential.
2. Changing the zoning designation from Residential Single, to Residential Multi, Planned.
3. Increasing the maximum overall density from one unit per 20,000 to one unit per 10,000 square feet. This would increase the total maximum build-out of the site from 246 units to 492 units.
4. Revising the boundary between Areas 5 and 6 to create a uniform zoning area and to establish a more logical subarea boundary that follows existing platted lot lines.

The 113-acre Padden Trails site is located east of Interstate 5, south of Padden Creek, and west of Lake Padden Park in Area 6 of the Samish Neighborhood.

The topography varies from flat meadow areas to areas with very steep slopes. Padden Creek flows northwest along the northern boundary of the site. Due to the isolated location and challenging terrain, access to and through the site is a major challenge. Only a single point of access for vehicles has been identified as currently feasible. A portion of the Padden Creek ravine is protected by a conservation easement dedicated by the property owners. The site's southern boundary abuts Lake Padden Park. Wetland areas have also been identified on the site.

2. Background Information/Procedural History

The 1980 Samish Neighborhood Plan is adopted and the current Residential Single Family zoning and 20,000 sq. ft. per unit density are established.

1990s (mid) – The site was cleared under approved forest practice permits.

2006 – Padden Trails 224-lot preliminary plat was approved with conditions. The Hearing Examiner concurrently recommended approval of a petition to vacate the platted rights-of-way within the preliminary plat boundaries.

2007 – The Samish Neighborhood Plan was updated with the exception of the land use section.

December 2010 – property owner submits a request to docket a comprehensive plan amendment and rezone.

February 2011 – City Council docket the proposal for review in 2011.

July 26, 2011 - Applicant submits a formal application for a comprehensive plan amendment and rezone.

December 1, 2011 – Planning Commission public hearing.

December 8 and 15, 2011 – Planning Commission work sessions.

December 15, 2011 - The Planning Commission adopts Findings of Fact, Conclusions and Recommendation. The Commission recommends approval of the proposal with conditions.

March 12, 2012 - City Council public hearing.

March 26, 2012 - City Council Committee of the Whole work session - proposal assigned to the Planning Committee for detailed consideration.

April 16 and 23 and May 2, 7, and 21, June 18, 2012 - City Council Planning Committee work sessions.

June 18, 2012 - The Planning Committee presented draft findings, conclusions and recommendations to the full Council. The Committee found that the applicant's original proposal, including the requested density increase from 20,000 to 10,000 square feet did not satisfy the Bellingham Municipal Code comprehensive plan amendment and rezone decision criteria. As a result, the Committee recommended a reduction in the proposed density to one unit/14,000 sq. ft. and other changes necessary for the Committee to find that the proposal satisfied the review criteria.

June 18, 2012 - The full Council considered the Planning Committee's recommendations. The Council voted (6-1, Knutson opposed) to direct staff to prepare a resolution and findings denying the proposed comprehensive plan amendment and rezone.

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

A non-project SEPA determination of Non-Significance was issued by the City of Bellingham on September 23, 2011 for the proposed comprehensive plan amendment and rezone. Additional environmental review will be required in the future for actual development proposals.

4. Consistency with the BMC Comprehensive Plan Amendment Decision Criteria and the Rezone Decision Criteria

Comprehensive plan amendments must be reviewed using the criteria in BMC 20.20.040 A.2. Rezones must be reviewed using the criteria in BMC 20.19.030 A. The Council's review of the criteria is as follows:

Comprehensive Plan/Neighborhood Plan Amendment Decision Criteria BMC 20.20.040 A

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

The Council finds that the applicant's original proposal and the proposal as revised by the Planning Committee are both generally consistent with the State Growth Management Act's infill, sprawl reduction, open space retention and housing diversity goals.

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

Changing Circumstances

The Council finds that while some circumstances have changed since 1980, the proposal is inconsistent with the community values as expressed in the Bellingham

Comprehensive Plan and is inconsistent with a number of other comprehensive plan goals and policies.

The Council acknowledges the Planning Committee's finding that some circumstances have changed since 1980. Capital facility planning and the development review process now include identification and construction of the facilities needed to support new development. The City's Multimodal Transportation Concurrency Program ensures that the transportation network has the capacity to accommodate new development as a requirement of the permitting process. Development regulations are in place to require necessary street, water, sewer and stormwater improvements to be installed by the property owner as development occurs. The infill tool kit provides the opportunity for diverse housing forms. Multifamily development must comply with the City's design guidelines and review procedures. Environmental protection standards, such as the Critical Areas Ordinance, assure protection and preservation of identified environmentally sensitive areas such as wetlands and steep slopes.

Changed Community Values

The Council finds the proposal inconsistent with the fundamental community values as expressed in the 2006 comprehensive plan. The Council notes that the Framework Land Use Policy FLU-1 and FLU-15 relate directly to the proposal:

*FLU-1 It is the city's overall goal to preserve and protect the unique character and qualities of the existing single family neighborhoods. **All policies, proposed development code and zoning changes should be reviewed with this goal in mind.** (emphasis added)*

*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.** (emphasis added)*

No evidence was presented to the Council that these fundamental community values have changed since the comprehensive plan was adopted in 2006. The Council finds that doubling the allowed density on this site and introducing multifamily housing forms as proposed by the applicant in this low density single family area would create impacts that do not protect, and in fact would undermine, the "character and quality" of the existing neighborhood.

Consistency with the Comprehensive Plan

In addition to FLU-1 above, the Council finds the proposal inconsistent with the following comprehensive plan goals and policies:

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

LU-34 Multifamily housing should be sited in urban centers and on designated primary transit corridors where appropriate levels of public facilities and services are available.

The Council finds that the proposed comprehensive plan amendment and rezone would not protect the existing low density, single family character of the Samish Neighborhood. Also, the proposal is counter to the comprehensive plan directive to place "higher intensity land uses in designated urban villages and corridors". The site is neither an identified urban village nor along a high density transit corridor. And, as discussed under criteria 2d, an "appropriate level" of public facilities and services are not available to mitigate the impacts of construction of nearly 500 units on the site.

The following are other comprehensive plan policies that support the Council's finding that, on balance, the proposal is inconsistent with, and would not further, implementation of the comprehensive plan:

*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.** (emphasis added)*

The isolated location of the subject property and the distance to services and employment centers would not promote alternative modes of transportation. The comprehensive plan's policy directives regarding the protection of neighborhood character was addressed previously.

FLU-7 The quality of the natural environment should be protected by taking into account the land's suitability for development and directing development away from important natural resources and environmentally sensitive areas." (FLU-7)

The Council finds that the isolated location, steep slopes, proximity to Padden Creek and environmental constraints present on the subject property make it unsuited for development at the density proposed by the applicant.

Infill Strategy 4 - Evaluate potential density increases in existing residentially zoned areas of the city..... Some Bellingham neighborhoods contain significant blocks of undeveloped land currently zoned for relatively low density residential

development. These and other areas could be evaluated to determine if higher densities might be appropriate. Factors that could limit development potential, such as environmental constraints (wetlands, steep slopes) and infrastructure capacity (water, sewer, roads, parks, schools) would need to be considered....." (emphasis added)

Strategy 4 is an appropriate statement of policy to apply to the Padden Trails proposal. It is an area with over 100 acres of undeveloped land currently zoned for low density residential development. As a result, it was appropriate for the City Council to docket the proposal for review to evaluate the proposed change to multifamily and the significant density increase. However, after careful study and evaluation, the Council finds that the property is not appropriate for higher densities. The factors cited in this strategy that might make an area inappropriate for a density increase - environmental constraints, infrastructure capacity - are present on the Padden Trails site. The site is constrained with wetlands, steep slopes, the Padden Creek gorge, expensive and challenging infrastructure improvement needs, and severe vehicle access limitations. The current zoning already allows development to be clustered so that environmentally sensitive areas could be preserved and the density from those areas transferred to the developable portions of the site. So the proposed zoning does not offer more or better protection for the sensitive areas.

The Council finds and concludes that, while the remaining developable land in the city is a finite resource that must be used efficiently as stated in Strategy 4, the Padden Trails site is not the right place to increase the allowed density. The efficient use of land means encouraging development at a density that can be supported by public facilities without significant adverse impact to surrounding areas and the environment. Doubling the allowed density and introducing multifamily housing forms would not protect the unique qualities and character of the existing neighborhood. Public facilities and services (especially police and fire services) could not be provided in an efficient manner due to the isolated location and access limitations. Public Works Department staff indicated that there are no plans to improve the adjacent "stair step" streets, and that such improvements would be very expensive and could not be required of the developer. Representatives of the Bellingham Fire Department expressed concern regarding their ability to serve the area, and noted that response times to the Padden Trail site would be longer than in other parts of the city.

Simply put, for all the reasons listed above, the Council finds and concludes that the proposal does not satisfy Criteria 2b because the site is not an appropriate location for higher densities and multifamily housing.

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

The Council finds that there are some potential community benefits in the proposal:

- encouraging a mix of residential housing types and price ranges;

- encouraging a range of rental and home ownership opportunities in the same development;
- promoting the use of infill toolkit housing forms; and
- expanding the open space and trail networks in the Samish Neighborhood.

However, on balance, the Council finds that criteria 2c is not met by the proposal to significantly increase the number of units that could be built on the site. The Council notes that the potential impacts from doubling the existing density are significant, not easily mitigated, and therefore not in the community's best interests. Development of 492 units with limited access to the site creates concerns from the standpoint of emergency vehicle access and response times. The proposed roadway improvements are not sufficient to address the potential negative impacts of constructing nearly 500 units on what amounts to a very long cul-de-sac. The Council also finds that allowing up to 200 multifamily units on the site would create a development pattern and scale out of character with the existing neighborhood.

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

The Council believes that approving the proposed density increase from 246 units to 492 units on an isolated site with only a single point of access creates unacceptable public safety risks. The requirement or concession by the developer to add fire suppression sprinklers to all units does not fully address the access and safety concerns. Fire officials indicated that sprinklers only provide an opportunity for occupants to escape a fire, but are not designed to put out fires. With hundreds of multifamily units and small lot single family and "tool kit" housing forms proposed as part of Padden Trails, the safety risks for residents of the development and in the surrounding neighborhood are not acceptable.

The Council further finds that the potential traffic impacts on Connelly and the adjacent "stair step" streets from constructing nearly 500 units on this site would require more mitigation than proposed or than can be required of the applicant. The Council noted statements from the Public Works Department that improvements to the stair step streets would be very expensive, and the City has no current plans to construct improvements in the area. This is further evidence that the proposal does not satisfy this criteria.

Therefore, based on the established record, the Council finds that the proposal does not satisfy criteria 2d.

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

See a review of the rezone criteria beginning on the next page.

Bellingham Municipal Code Rezone Review Criteria

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

The Council finds the proposal to double the allowed density on the site and to introduce multifamily housing forms is inconsistent with a number of comprehensive plan policies as explained in detail in the findings listed under the Comprehensive Plan Amendment Review Criteria 2b. Therefore the proposal fails to satisfy this criteria.

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

The Council finds that the applicant's proposal fails to satisfy this criteria for the reasons stated under Comprehensive Plan Amendment Review Criteria 2d.

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

The Council finds that the applicant's proposal fails to satisfy this criteria for the reasons stated under Comprehensive Plan Amendment Review Criteria 2c.

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

The Council finds that applicant's proposal fails to satisfy this criteria. The Council has previously noted in these findings that the proposed zoning, with the increase in density and the introduction of multifamily housing forms, is inappropriate for the Padden Trails site for all the reasons stated under the various Comprehensive Plan Amendment Review Criteria. The Council finds that the subject property is suitable for development under the current Residential Single zoning and 20,000 square foot/unit density.

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

The Council finds that the proposal also does not satisfy this criteria, especially with regard to transportation facilities and emergency services. See the discussion and findings in the Comprehensive Plan Amendment Criteria 2d.

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

The Council finds that the applicant's proposal fails to satisfy this criteria for all the reasons stated under Comprehensive Plan Amendment Review Criteria 2c and 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 Council finds that conditions in the area have not changed sufficiently to outweigh the compatibility and safety concerns raised during the review of this proposal. Therefore Criteria 7a is not met.

There has been no evidence presented that would indicate that an error occurred when the current zoning was established. Development under the current zoning would be appropriate and compatible with the existing development pattern in the neighborhood. The environmental regulations in place would ensure that areas with very steep slopes and wetlands would be protected from the impacts of development. The current zoning already allows development to be clustered so that environmentally sensitive areas could be preserved and the density from those areas transferred to the developable portions of the site. As a result, the Council finds that the current zoning is appropriate for the site and therefore criteria 7b is not met.

As previously discussed, the Council finds that the proposal would not implement the policies of the comprehensive plan. See the discussion and findings under the "Consistency with the Comprehensive Plan" section of Comprehensive Plan Review Criteria 2b. Therefore Criteria 7c is not met by the proposal.

II. Conclusions

Based on the information provided by City staff and the applicant, the findings and recommendations of the Planning Commission, the public testimony and written comments, and the extensive review of the Council's Planning Committee, the City Council concludes:

- 1. The proposed amendments to the comprehensive plan to change the land use designation from Single Family Residential to Multifamily Residential and the proposed density increase from 20,000 sq. ft. per unit to 10,000 sq. ft. per unit do not satisfy the Comprehensive Plan Amendment Review Criteria in BMC 20.20.040 A.2 (a-e).
- 2. The proposed amendments do not satisfy the Rezone Approval Criteria in BMC 20.19.030 A. (1-7).

III. Decision

The Padden Trails comprehensive plan amendment and rezone proposal is denied.

ADOPTED this _____ day of July, 2012.

City Council President

ATTEST: _____
Council Legislative Administrator

APPROVED AS TO FORM:

City Attorney