



September 13, 2024

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Mukilteo City Council
City Hall
11930 Cyrus Way
Mukilteo, WA 98275

Re: Comments for September 16, 2024 Public Hearing on Comprehensive Plan Amendments—6500 Harbour Heights

Dear Council President Harris and Members of the City Council:

I represent the Sundance at Harbour Pointe Condominium Owners Association, a Washington non-profit association representing seventeen households to the immediate east of the Harbour Heights Tech Center property at 6500 Harbour Heights Parkway (Snohomish County Tax Parcel No. 28042000401100). The Harbour Heights Tech Center Property is currently occupied by a large commercial building, is zoned Business Park, and is designated “Industrial” on the City of Mukilteo’s comprehensive plan map. Tri-Pointe Homes has applied to rezone the Harbour Heights Tech Center Property from Business Park to Multifamily Residential-High Density/Multiple Residential (“MR”), with a new comprehensive plan map designation of “Multifamily Residential.” On behalf of the Sundance at Harbour Pointe Condominium Owners Association, I ask that you consider the following comments at the Council’s September 16, 2024 public meeting or hearing on this proposed rezone and comprehensive plan map amendment.

A. The September 16, 2024 public meeting or hearing should be postponed until such time as the City has complied with all applicable procedural rules for comprehensive plan map amendments and rezones.

As an initial matter, the City of Mukilteo has not followed the applicable rules for public hearings on proposed comprehensive plan map amendments and rezones, which may be found at chapter 17.72 of the Mukilteo Municipal Code (“MMC”). In pertinent part, those rules vest the initial review of proposed comprehensive plan map amendments with the City’s Planning Commission. MMC 17.72.030.B.2 (“It is the responsibility of the planning commission to review and oversee the preparation of all materials to express, explain, or depict the various aspects or elements of the text or map amendments including that documentation required by the State Environmental Policy Act.”). Of particular importance, “[t]he planning commission also has the responsibility to approve all findings of fact and recommendations which are to be transmitted to the city council for their consideration.” *Id.* (emphasis added).

The procedural rules at chapter 17.72 of the Mukilteo Municipal Code require proposed comprehensive plan map amendments to be considered at a “public hearing” before the Planning Commission, at which “[t]he planning commission shall make its findings of fact and recommendation.” MMC 17.72.030.B.6.a. Thereafter, “[u]pon reaching a decision at public hearing, the planning commission shall transmit to the city council its findings of fact and recommendations,” and “[t]he mayor shall acknowledge the receipt of the commission’s findings and recommendations and make the findings and recommendations a part of the permanent file.” MMC 17.72.030.B.7.

Following the Planning Commission’s transmittal of its written findings and recommendations, the City Council is required to consider the proposed comprehensive plan map amendment at a public meeting. MMC 17.72.030.B.8.a (“Upon receipt of the commission’s findings and recommendations on the comprehensive plan and map amendments, the council shall consider the proposed amendment at public meeting.”). At that meeting, the Council may vote to approve the proposed plan amendment “in accordance with the findings and recommendations submitted by the planning commission.” MMC 17.72.030.B.8.a.i. Alternatively, the Council may approve with modifications, refer all or part of the proposal back to the Planning Commission for further consideration, or it may disapprove the proposal. MMC 17.72.030.B.8.a.ii.–iv. However, if the Council wishes to make a “substantial modification” to the proposal as expressed in the Planning Commission’s written findings and recommendation, then the Council “shall hold its own public hearing.”

Finally, any hearing on a proposed rezone that is intended to implement a proposed comprehensive plan map amendment must be publicly noticed ten days prior to the hearing. MMC 17.72.030.C.2.b (requiring rezones to be processed under chapter 17.13 of the Mukilteo Municipal Code); MMC 17.13.070.C.1 (“A notice of public hearing must be issued at least ten days before the hearing.”). This notice must be sent via email to parties of record, posted at the City’s “official posting places,” and published in a newspaper of record. MMC 17.13.0760.F.

In this case, the City issued notice of the September 16, 2024 public hearing on the 6500 Harbour Heights proposal via email to parties of record on September 10, 2024, only six days prior to the public hearing. This notice clearly failed to meet the ten-day notice requirement at MMC 17.13.070.C.1.

Even more critically, despite that the Mukilteo Municipal Code expressly requires the Planning Commission to transmit its own written findings and recommendations to the City Council *before* the City Council may lawfully consider a proposed comprehensive plan map amendment, we are aware of no evidence that any such findings or recommendations have actually been transmitted for the 6500 Harbour Heights proposal, and may not even have been drafted yet. No such written findings or recommendations by the Planning Commission have been posted on the City’s website. No such written findings or recommendations Planning Commission have been transmitted to parties of record.

Indeed, it was not until Wednesday, September 11, 2024 that the City even posted an agenda for the proceedings planned for September 16, 2024. This is despite that the public notice email issued on September 10, 2024 stated that “[i]nformation on this meeting can be found on the City’s

website,” and that the applicant has “submitted updated documents.” The City’s website also currently says that “Meeting Materials will be posted on the city’s meeting agenda page one week prior to the hearing.” The City’s late notice of the hearing not only violates the ten-day notice requirement at MMC 17.13.070.C.1, it deprives the public of a meaningful time period in which to prepare comments.

Nor does the Council’s late-posted agenda materials—posted a mere three business days before the planned hearing—cure the lack of written findings by the Planning Commission itself. The Council agenda packet includes a staff recommendation, a newly amended version of the draft comprehensive plan (Exhibit 1), a proposed ordinance (Exhibit 2), draft findings of fact and conclusions of the Council prepared by City staff (Exhibit 3), a new net density analysis by City staff (Exhibit 4), and staff notes (Exhibit 5). Nowhere does the Council packet contain actual findings and recommendations by the Planning Commission itself, as required by the plain language of the Mukilteo Municipal Code.

The lack of written findings and recommendations by the Planning Commission is a significant obstacle to meaningful public comment and participation in the September 16, 2024 public hearing. As the Council is likely aware, a significant issue with the proposed plan amendment and rezone is the proposed “unit cap,” needed to ensure that the density of future residential development within the Harbour Heights Tech Center Property remains consistent and harmonious with the surrounding area. The City’s draft comprehensive plan identifies “preservation of community character” as an important goal within the Harbour Pointe master planned community, of which the Harbour Heights Tech Center Property is a part. *See* Draft Comprehensive Plan at 33 (July 2024). The City’s existing comprehensive plan similarly provides that “new housing” should be “compatible with and complimentary to the residential character of [existing] neighborhoods.” City of Mukilteo Comprehensive Plan 2035 at 22. In this case, throughout the City’s review of the proposed comprehensive plan map amendment and rezone for the Harbour Heights Tech Center Property, the establishment of an appropriate unit cap for that property has been a matter of great public concern, the purpose of which is to ensure that future development preserves the character of the surrounding community.

The applicant itself knows that establishing an appropriate unit cap is a necessary component of the Council’s approval of the proposed comprehensive plan map amendment and rezone. When the applicant first submitted its application, it requested a unit cap of 275 dwelling units—a proposal that has been repeatedly and widely criticized by the surrounding community for its failure to reflect the density of the surrounding neighborhood. Later, the applicant proposed to reduce this unit cap to 222 units. For its part, the Planning Commission voted at its August 8, 2024 meeting to recommend a unit cap of 180 units. However, all of these proposals are far in excess of the numerous public comments from the surrounding community that the cap should be 136 units to more closely match the density and character of the surrounding residential community, consistent with both the existing and proposed comprehensive plans.

Yet, despite the importance of this issue to the surrounding community, the public has not seen any official findings and recommendations by the Planning Commission—either on a proposed unit cap, or on whether the council should even approve the applicant’s request for a comprehensive plan map amendment and rezone. Without such findings and recommendations by

the Planning Commission, not only is the City Council prohibited from voting on the proposed map amendment and rezone under the plain language of the Mukilteo Municipal Code, the public has been deprived of critical information necessary to comment meaningfully on the merits of the applicant’s proposal and the basis therefor. The preparation and disclosure of findings by the Planning Commission is also especially important here, where the applicant, and potentially even City staff, are opposing the unit cap recommended by the Commission. Without written findings by the Commission, the Council lacks a critical perspective on this important issue.

Finally, as discussed above, in voting on a proposed comprehensive plan map amendment, the Council has four options—it may vote to approve the amendment “in accordance with the findings and recommendations submitted by the planning commission.” MMC 17.72.030.B.8.a.i. Alternatively, the Council may approve with modifications, refer the matter back to the Planning Commission for further consideration, or it may disapprove. MMC 17.72.030.B.8.a.ii.–iv. If the Council wishes to make a “substantial modification” to the proposal as expressed in the Planning Commission’s written findings and recommendation, then the Council “shall hold its own public hearing.”

In this case, materials issued by the Council have been ambiguous about the nature of the proceeding planned for September 16, 2024—sometimes referring to it as a “public hearing,” and at other times (such as in the public notice email issued on September 10, 2024) as a “public meeting.” If it is a public hearing, then this raises the question of whether the Council intends to entertain any “substantial modifications” to the recommendation of the Planning Commission (which, again, has not been made public or potentially even drafted). Alternatively, if the proceeding is to be a meeting, then the question remains whether a future public hearing will be held. This leaves the public significantly in the dark as to the nature of the proceeding on September 16, 2024 and the potential topics that may be discussed or addressed there.

Because the Planning Commission has not presented written findings and conclusions on the proposed comprehensive plan map amendment, the public hearing or meeting currently scheduled for September 16, 2024 should be postponed. In the future, the City should provide adequate and timely notice of any future meetings or hearings on the applicant’s proposal, in accordance with MMC 17.13.070.C.1. The City should also clarify whether any future proceedings are “hearings” or “meetings,” whether substantial changes to the Planning Commission’s recommendations will be discussed or evaluated, and what those changes will be. All of this needs to be disclosed and clarified before the City Council votes on the proposed comprehensive plan map amendment and rezone at the Harbour Heights Tech Center Property at 6500 Harbour Heights Parkway.

B. If the Council chooses to entertain the proposed comprehensive plan map amendment and rezone on September 16, 2024, then it should either refer the proposal back to the Planning Commission for further consideration, or impose a cap of 136 units consistent with the density of the surrounding community.

If the City Council chooses to proceed with consideration of the proposed comprehensive plan map amendment and rezone despite the lack of written findings by the Planning Commission, then there are several issues that the Council needs to address relating to the unit cap.

First, it is greatly concerning that at the same time the applicant, Planning Commission, and the public have been discussing the issue of an appropriate unit cap, the applicant has simultaneously proposed a development agreement seeking numerous modifications to the City’s zoning-code “Bulk Regulations” which are clearly designed to allow it to build even more residential units on the Harbour Heights Tech Center Property than would be allowed under the current zoning code with the applicant’s requested MR zoning designation. These modifications include significant reductions to minimum lot area, minimum lot width, maximum lot coverage, and setbacks. Approval of these modifications would allow development far in excess of all proposed unit caps for the property, be it the applicant’s current proposed cap of 222 units, the Planning Commission’s proposed cap of 180 units, or a cap of 136 units as requested by the public. In this way, the modified development standards proposed in the draft development agreement are in direct conflict with all unit caps discussed to date.

We understand from the City’s September 10, 2024 notice email that the development agreement will not be voted upon at the September 16th public meeting or hearing. Nevertheless, the fact that the applicant’s modified development standards conflict with all unit caps discussed to date is deeply concerning to the Sundance at Harbour Pointe Condominium Owners Association, which represents one of the housing communities in the surrounding area that will be most directly and significantly impacted by any future development of the Harbour Heights Tech Center Property. Therefore, we request that if the Council approves the proposed comprehensive plan map amendment and rezone, that the Council also set an appropriate unit cap as part of that process. The cap should be included within the comprehensive plan itself to ensure that it cannot be superseded later by modified development standards in the development agreement. Alternatively, if and when the Council approves the map amendment and rezone—be it on September 16th or at a later date—it should specify, as part of the approval ordinance, what the cap will be.

The problem, however, is how to set an appropriate cap without written findings and recommendations of the Planning Commission, a key component of the Council’s review and the public’s understanding of this important issue. Throughout the City’s review of this proposal, and in an effort to arrive at an appropriate cap, staff have presented numerous versions of a density chart comparing the density of a future development project on the Harbour Heights Tech Center Property with that of surrounding properties. This began with a “net density” chart included in the Planning Commission’s agenda packet for its June 20, 2024 meeting, which wrongfully excluded areas set aside for native growth protection easements and open space—as if the character and feel of the surrounding neighborhood is defined only by buildings, and not also the open space between and around them.

Later, at the Planning Commission’s July 18, 2024 meeting, staff presented a modified net density chart, using a 20-percent reduction of the Harbour Heights Tech Center Property as a “proxy” for open space. This version also removed 0.5 acres from the Sundance property because that area does not “surround the houses.”

Later still, for the Council’s work session on August 8, 2024, staff presented yet another version of the density comparison chart, this time including “gross density” but (a) still omitting a significant portion of the Sundance property, and (b) recognizing that the calculations by staff are

substantially different from calculations submitted by the residents themselves, and failing to resolve the conflict.

Finally, in its latest density analysis—posted late on Wednesday, September 11, 2024—staff have now reverted to their “net density only” analysis, entirely omitting a gross density calculation from their submittal for the proceedings on September 16, 2024. This is despite that the character and feel of a neighborhood is clearly a product not of a myopic focus on places filled with buildings and other physical improvements (represented by net density), but also by the perceptible open, undeveloped spaces between and surrounding those individual buildings and developed areas. The placement, size, and distribution of parks, forested areas, and other open spaces play an integral role in the character of a residential community, but are entirely omitted in a strict “net density only” analysis.

The number and diversity of density calculations presented by staff illustrate the difficulty of setting an appropriate unit cap for the Harbour Heights Tech Center Property—both in terms of choosing an appropriate methodology for comparing the density of future development on that property to that of the surrounding neighborhood, and in arriving at accurate calculations based on that methodology. All of this underscores the need for written findings by the Planning Commission, as required by the Mukilteo Municipal Code, and counsels in favor of the City Council referring the proposed comprehensive plan map amendment and rezone back to the Planning Commission for further consideration and clear findings resolving these issues, followed by a later vote by the Council on the proposal and, if approved, to establish the cap at that time.

If the Council chooses to proceed now despite the absence of such findings by the Commission, then the Sundance at Harbour Pointe Condominium Owners Association would respectfully request that the cap be set now at 136 units.

Based on the calculations presented to date by City staff, the average gross density of development in the area surrounding the Harbour Heights Tech Center Property is 4.44 units per acre. We base this average gross density calculation on the chart presented at the Planning Commission’s August 8, 2024 meeting, without subtracting 0.5 acres of the Sundance Property, a reduction which we respectfully submit was arbitrary and artificially inflated the gross density of that development.

Comparing these figures to the proposed future development of the Harbour Heights Tech Center Property, if such development were to match the average gross density of the surrounding area, that would equal only 136 units on that property (4.44 units x 30.5 acres). In comparison, the applicant’s proposed cap of 222 units would equate to a gross density of 7.26 units per acre (far in excess of any existing development in the surrounding neighborhood). Even a cap of 180 as recommended by the Planning Commission would result in a gross density of 5.9 units per acre (still well excess of the average for the area). Thus, we request that—if the Council chooses to proceed now, without awaiting written findings and a recommendation on this issue by the Planning Commission, then the cap should be set at 136 units, a number that would substantially preserve the character of the surrounding community.

C. Other Considerations

In addition to establishing an appropriate unit cap for future development of the Harbour Heights Tech Center Property, Sundance also has a significant interest in preserving the existing protections of its property as expressed in the covenants recorded on that property. *See* Declaration of Restrictive Covenant dated June 29, 2024 (Snohomish County Assessor No. 200408270461). These include a 135-foot setback for future development of the Harbour Heights Tech Center Property (as measured from the Sundance property), restrictions on light and glare, a 100-foot buffer zone in the eastern border of Parcel No. 65600HH to protect the steep slope that is present there, and a guarantee that future development will not adversely affect views from homes within the Sundance property. As part of the City’s stated goal of preserving the character of surrounding communities, these same requirements should be attached to any approval of future development of the Harbour Heights Tech Center Property.

We understand from the City’s September 10, 2024 notice email that the contents of the proposed development agreement will not be addressed at the planned meeting or hearing on September 16, 2024. However, should that issue arise, we request that the same restrictions that currently apply to the Harbour Heights Tech Center Property—established for the benefit of the Sundance property—continue to apply as a condition of the final development agreement. Among other things, the development agreement should specify that no new structures may be placed closer to 135 feet from the western border of the Sundance property, and that future development of the Harbour Heights Tech Center Property shall not adversely affect views from homes within the Sundance property. This last requirement should be implemented by a provision restricting the height of any new residential structures on the Harbour Heights Tech Center Property to 35 feet above existing grade, not 50 feet as proposed in the draft development agreement. “Existing grade” should also be defined as the grade that exists on the date the development agreement is signed, not merely “as of 2024” as stated in the current draft of the development agreement.

D. Conclusion

As specified in the Mukilteo Municipal Code, the City’s Planning Commission must enter written findings and recommendations prior to the Council’s consideration of a proposed comprehensive plan map amendment. To date, no such findings or recommendations have been made or disclosed, depriving the public of critical information necessary to comment meaningfully on the merits of the applicant’s proposal and the basis therefor. Nor has the City provided timely notice of the meeting or hearing on September 16, 2024. For both of these reasons, the Council’s consideration of the proposed comprehensive plan map amendment and rezone should be postponed to a later date.

In addition, in order to guarantee that an appropriate unit cap not only is established, but also that the cap is not overcome or superseded by the applicant’s proposed modifications to applicable development standards, the Council should establish an appropriate cap as part of its vote on the proposed map amendment and rezone. Given the absence of findings by the Planning Commission and number and diversity of density analyses presented by staff, the most appropriate way to arrive at an appropriate unit cap is to refer this matter back to the Planning Commission for further consideration.

If the Council chooses to move forward with a vote on the proposed map amendment and rezone on September 16, 2024, then the Sundance at Harbour Pointe Condominium Owners Association respectfully requests that the cap be set at 136 units—a number that is consistent with the average gross density of the area and would preserve the character of the surrounding community.

Thank you for your attention and consideration of these important issues. If you have any questions about this comment letter, please do not hesitate to contact me at bryan@teleginlaw.com or (206) 453-2884.

Very truly yours,

TELEGIN LAW PLLC

A handwritten signature in blue ink, appearing to read "Bryan Telegin", written over a white background.

Bryan Telegin

*Counsel for Sundance at Harbour Pointe
Condominium Owners Association*

cc: Client

City of Mukilteo
Planning & Community Development
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