May 8, 2012



**Planning Commission** City of Bellingham 210 Lottie Street Bellingham, WA 98225

RE: Fairhaven Neighborhood and Urban Village (FNUV) Plan-Height Limit in I-2

Dear Planning Commission,

From monitoring deliberations regarding the Fairhaven Neighborhood and Urban village plan at the May 3<sup>rd</sup> Planning Commission work session, we understand that the Planning Commission will be recommending a height limit of 42' for the entire I-2 Area. While we appreciate the Planning Commissions efforts to protect views, the Port has an equal interest in preserving land and entitlements for marine related industries within this area. We therefore respectfully reiterate the Port's position for desired height limits of 60' to 65' for marine related industry as contained in our letter to the Planning Commission dated April 24, 2012.

If the Planning Commission remains opposed to a 60' to 65' height limit for the entire I-2 area to support marine related industry, the Port would suggest that your final recommendation to City Council also include a policy language change to be added to the FNUV plan that effectively states:

"To protect views, building height should be limited to 42' in Area I-2. However, higher building heights should be considered in Area I-2, when it can be shown that a marine related industrial building must be higher to functionally achieve its intended use."

With such a policy provision, the Port believes it would be a reasonable condition that any such proposal should undergo a view analysis and public hearing with adequate notification so that the City may determine that a proposed building will not result in a significant obstruction of public views from Fairhaven's Commercial Core Area.

The Port of Bellingham remains committed to promoting a vibrant waterfront economy by creating conditions that will be attractive to jobs of the future. Thank you for your consideration.

Sincerely,

PORT OF BELLINGHAM

Dung McKlenry on behalf of Sylvia Goodwin.

Sylvia Goodwin

Planning and Development Director

c: Rob Fix, Interim Executive Director, Port of Bellingham Port of Bellingham Board of Commissioners

Mr. Tom Barrett, Chairman
Bellingham Planning & Development Commission
210 Lottie Street
Bellingham, WA 98225

May 9, 2012

Chairman Barrett and Planning Commissioners:

Re: DRAFT FAIRHAVEN URBAN VILLAGE PLAN
NE CORNER OF 12<sup>TH</sup> & HARRIS AVE – COMMERCIAL CORE

We are the owners of the 12<sup>th</sup> and Harris LLC, owners of the Fairhaven commercial core property at the northeast corner of 12<sup>th</sup> and Harris Ave. The site is commonly known as 1215 12<sup>th</sup> Street where a drive-through food vender currently operates. Past uses include a gas station, retail shops and services in historic railroad cars, and the original historic Fairhaven Hotel.

The March 2012 draft of the Fairhaven Neighborhood and Urban Village Plan (FNUVP) designates the site within the proposed Commercial Core (CC) and the Historic Influence Area site. The April 19, 2012 staff report to the Planning Commission recommends Development Regulations to implement the FNUVP. The staff recommended a height limit of 66 feet as defined in Table .330-A Standard Development Regulations, and further detailed by Figure .330-A Historic District and Historic Influence Area map and Figure .330-B Building Height Options. We supported the staff recommendation at that time.

We understand some Planning Commissioners on May 3 voiced their support for a 35 foot height limit for our site and adjacent properties east of 12<sup>th</sup> Street. This restrictive limit runs counter to numerous goals and policies within the current Bellingham Comprehensive Plan designation of Fairhaven as a Tier 1 Urban Village. The draft FNUVP before the Commission furthers the Comp Plan mandate with detailed goals and policies for vertical development of Fairhaven. The staff professional analysis and the FNUVP call for commercial buildings/mixed uses to meet the City infill goals. The urban development can be best achieved by permitting taller, urban buildings. We concur with the analysis and believe the City's goals can be met on our site.

The transportation element in the FNUVP identifies 12<sup>th</sup> Street as a primary arterial linking Fairhaven to the rest of the City. Currently the WTA Red "Go Line" travels on 12<sup>th</sup> Street and other WTA lines pass our site on Harris Avenue. Our site is commonly

recognized as at the central core of Fairhaven as most, if not all traffic passes by it. The staff correctly documented this reality by recommending an appropriate height limit of 66 feet to encourage urban development as mandated by the Comp Plan.

In response to some Commissioners' opinion for a 35 foot height limit, the staff has now offered a compromise of 56 feet. We believe the original 66 foot limit is the most appropriate regulation. However, should the Commission vote to accept the revised staff proposal for 56 feet, we request the Commission enter a specific finding to permit roof top common usable space for our future building tenants. The improvements would be an enclosed space with roof gardens in an area smaller than the entire roof area. Similar facilities exist at the Fairhaven Gardens condos fronting 11<sup>th</sup> Street. We do not anticipate the enclosed space would be greater than 800 square feet, but would extend beyond the 56 foot limit for the building parapet.

Thank you for your consideration. We are available to respond to any questions from the Commission or the staff.

Sincerely, Rolph W. Blad

Ralph W Black.

Owner

Cc: Greg Aucutt, AICP, Senior Planner

Jeff Thomas, Director



## David Carlsen <eclipsebook@comcast.net> 05/10/2012 08:58 AM

To planningcommission@cob.org

CC

bcc

Subject FNUVP Comment - Heights and Parking

Dear Planning Commissioner,

It was pleasing to see the extravagant overreach of permissible building height in the FNUVP Draft somewhat tempered by the actions of the Commission during the May 3 meeting.

There have been concerns, since learning Planning Staff at the May 8 meeting requested restored heights in a large swath east of 12th and north of Mill, that this so-called "compromise" might be entertained by the Commissioners. Please abide the original Commission agreements resulting May 3 for that area, which also is the crest of the Fairhaven basin that surrounds Puget Sound. The sky is as much an element of the view vista as the bay. A transaction that begins as lopsided as the FNUVP Draft has lots of latitude for reduction and modification before "compromise" even begins to enter the picture.

The issues raised by staff, primarily resulting nonconformance for a couple of buildings and the transit imperative for maximum infill, are more than counterbalanced by the opportunities existing west of 12th and south of Mill. The Mason Building is the important element in the nonconformance issue, and positing that it may not be replaced to the same height ignores that it's hollow, atrium style interior likely never would be re-created, and that the likely replacement structure could provide much more floor area in 35 feet than the existing building provides at it's height of approximately 50 feet, because continuous floors would be substituted for the interior atrium. The potential loss of one or two tall buildings to nonconformance east of 12th is more than made up by the numerous possibilities for 1 & 2 story structures west of 12th to be replaced by 4 and 5 story structures. There are dozens of examples of that possibility.

The transit issue is a canard also. Thirty-five foot buildings are possible on the east side of the channel and can provide a great deal of density, if so designed. There is even more density possible in the few blocks extending west of 12th, all within reasonable walking distance to the transit corridor, which includes portions of 10th and west Harris also. It seems hypocritical for planners to expect doorstep service for hypothetical transit users at the same time actual Fairhaven workers and patrons are directed that it would be reasonable to park and walk up to 1/2 mile to conduct their business.

If height is to be revisited, perhaps areas such as I-3 or the central core could be looked at again for more reduction than resulted May 3.

Personally, my suggestion would be to revisit the parking recommendation made May 5. I am a merchant and a property owner, and like most merchants recognize that as far as parking solutions are involved neither the OFA "Planning Committee" nor FVA and it's lobbyists represent the interests of merchants. The interlocking board of directors of the two organizations filter all parking

solutions through the FVA lens, which only promotes solutions that benefit property development interests, especially those keeping development costs low. At least a couple of Commissioners present at the May 8 meeting thought that measures could be taken to begin increasing supply in the core, one quite sensibly suggesting an LID arrangement be explored to provide sufficient, proximate local parking. Those are good ideas that deserve more discussion and ultimately recommendation.

Thank you for suffering more comment and good luck with your enterprise.

David Carlsen



Barbara Zielstra <barbarann09@gmail.com> 05/10/2012 09:13 AM To planningcommission@cob.org

cc bcc

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Subject FUVP

Dear Commissioners,

As you continue to refine the zoning and design portions of the FUVP, I ask that you not be swayed from your clarity of last Thursday's meeting. Please hold the 35' along Mill and don't "gerrymander" the existing non-compliant buildings.

- 1) Our existing plan does not make exception for existing buildings that have portions taller than 35'
- 2) The Kulshan and Library are pitched roof buildings and measured differently. If either were to succumb to a fire, the new building would not mirror the existing one, in all probability. In that case, a 56' tall building would be totally out of place in the neighborhood.
- 3) Fairhaven Gardens is 33' along Finnegan Way, 35' along 11th St., The only place this building is taller is along Mill in the portion that joins what would be two separate buildings. This works well asthetically as two separate buildings joined mid-Mill would look bulky and unattractive. If a fire destroyed the Gardens, the Gardens could petition for a variance to be rebuilt. A variance allowed the building to be built as it is today.

Maintaining the 35' north of Mill, its entire length in Fairhaven, can be simple. The variance mechanism is in place for unusual circumstances. Non-complying structures destroyed by fire should be rebuilt to 35' or seek a variance to replicate the original building.

Since you will be considering design elements tonight, I'd like to add a quick word about mandated 14' & 12' ceiling heights and 3' parapets. These mandated heights are excessive, especially in the perimeter of Fairhaven (your original 35' zone). Small shops and condos will feel uncomfortable and awkward when ceilings are so tall. Allow architects and owners more flexibility, fewer regulations, for the perimeter of Fairhaven. 35' comfotably allows 3 stories, if you don't mandate 14 and 12' ceiling heights and 3' parapets.

Thank you for your consideration and your continued work on our plan, Barbara Zielstra



<planningcommission@cob.org>

CC

bcc

Subject Heights revisited

10 May 2012

To:

City of Bellingham Planning Committee Members

Re:

From: Josselvn Winslow

Heights revisited

The Planning Department's recommendation that both sides of 12<sup>th</sup> Street should be 56 feet because it is a main arterial is logical, but:

- I think staff included a small loop around three buildings north of Mill to raise the height limit to 56 feet because, at 35 feet, they are "non-conforming". Those buildings were listed as Fairhaven Gardens, the Kulshan Club and the Fairhaven Library. However, if my notes are correct, the library is 68 feet – and would still be "non-conforming".
- The lot on northeast corner of Mill and 12<sup>th</sup> is tucked back from the main arterial as it bends into Finnegan Way and should remain at 35 feet. A 56 foot building next to the library would diminish the library as a historical landmark and block views from above.
- The east side of the street along 12<sup>th</sup> between Harris and Mill (the old Fairhaven Hotel site) should be allowed the 56 feet height limit. However, because of the topography, while 56 feet on 12<sup>th</sup> would be allowed, the height on 13<sup>th</sup> should only be 35 feet – reflecting Jeff Brown's questions about the lower lot and the upper lot and the "strip mall" that now houses Trek Video and WECU. That would be consistent with the height of the building on the southeast corner of 13<sup>th</sup> and Mill (Fairhaven Heights). Views from South Hill would be protected.
- South of Harris permit building heights up to 56 feet only on the west side of 13<sup>th</sup> Street. Retain the 35 foot height limit on the east side of 13<sup>th</sup>. This action would provide a better buffer for the Happy Valley Neighborhood.

Thank you for continuing to take comments.

Josselyn Winslow 134 Finnegan Way #306 – Bellingham, WA 98225 – 360-734-9586 – ibwinslow@nas.com

Mayor Kelli Linville cc: City Council Members John C. Belcher\*
Jack O. Swanson
Chester T. Lackey
Terrance G. Lewis
Douglas K. Robertson
\*Of Counsel

## Belcher Swanson RECEIVE

Bradley D. Swanson Scot S. Swanson Peter R. Dworkin Mark A. Lackey Hugh C. Klinedinst Kristen C. Reid

May 9, 2012

MAY 1 0 2012

City of Bellingham Planning

Planning and Development Commission City of Bellingham Planning and Community Development Department 210 Lottie Street Bellingham, WA 98226

Re:

Fairhaven Neighborhood Plan

Jacaranda Property

## Greetings:

I represent Jacaranda Corporation. It owns the two properties located to the north of the Village Green and to the west of Fairhaven Gardens. On Thursday, May 3<sup>rd</sup>, I understand that the Planning Commission recommended to the City Council to impose a 35 foot height limit upon Jacaranda's property. I am writing to you to establish why such a height limit is contrary to the public goals and visions for Fairhaven.

- 1. <u>Limit will Stop Development Envisioned</u>. These two properties are the ones most available for immediate development. The new Fairhaven Urban Village Plan is intended to be the catalyst to promote infill development in Fairhaven. A 35 foot height limit would make development of these properties economically unfeasible. The reasons are well known and straightforward:
  - Off-street parking cannot be accommodated in a 35 height limit;
  - Costs of development cannot be absorbed when useable space is limited to 35 feet.

Simply put, the imposition of a 35 foot height limit means that the key property that Fairhaven needs to promote infill will lay fallow. This is contrary to all of the public goals of the Fairhaven Urban Village, as well as the Growth Management Act.

2. <u>No Reason for Unique Treatment</u>: As the Planning Commission has seen, it is appropriate to have height limits in Fairhaven that exceed 56/66 feet. This will retain the current character, not be inconsistent with the existing buildings, and allow for economically viable uses of the properties. Why then would the Jacaranda properties suffer such unique treatment? This is nothing more than spot zoning.

The only possible explanation is to protect the views from Fairhaven Gardens. Any attempt to protect private views through public regulation is a violation of the city's police

Planning and Development Commission City of Bellingham May 9, 2012 Page 2

power. Imposing a height limit for that purpose would simply be transferring economic value from the Jacaranda properties to the Fairhaven Gardens property. This is a wholly inappropriate and an unconstitutional exercise of police power.

The court in Nectow v. City of Cambridge, 277 US 183 (1928), made it clear that zoning decisions must substantially advance **public** health, safety, or welfare. This is the foundation of all zoning law — there must be a defined public purpose. Imposing such a height limit on the Jacaranda properties has no such public benefit. Importantly, none of the view analysis by the City pointed out any benefits to public views that would be affected by allowing a height limit as provided to the rest of Fairhaven.

As the city is well aware, no property owner is vested under existed zoning. So while the owners of the Fairhaven Gardens may have hoped for view protection, no such view protection was granted through the zoning regulations. This is nothing different than another property owner coming to the city complaining that their property has been down-zoned and lost value. The city's response would be clear – there is no right or ability to rely upon existing zoning in the future.

It is clear that the unique treatment of this property simply to protect the private views of Fairhaven Gardens, both from units and their private rooftop plaza, is an inappropriate use of the city's regulatory power. This must not be allowed to stand.

Let me again thank all of you and to reiterate the great appreciation everyone in Fairhaven has for the work that you are undertaking in moving this important process forward. But in doing so, please be mindful that the city's regulations are to benefit the public and not private property owners. Accordingly, the height limit for my client's property should be the same as other properties in the Fairhaven Urban Village – 56 to 66 feet.

Very truly yours,

BELCHER SWANSON LAW-FIRM, PLLC

DOUGLASK. ROBERTSON

Attorney at Law

DKR:kms

cc: client

How the City of Bellingham's planning staff measures the height of a building?

The measurement system for building heights needs to be defined and standardized. The public and residents of Fairhaven have been given multiple measurements for the same buildings within the Fairhaven Neighborhood Plan area. This is extremely confusing.

As an example, I have included two PDF files of the Fairhaven Gardens building plan elevation drawings. Showing:

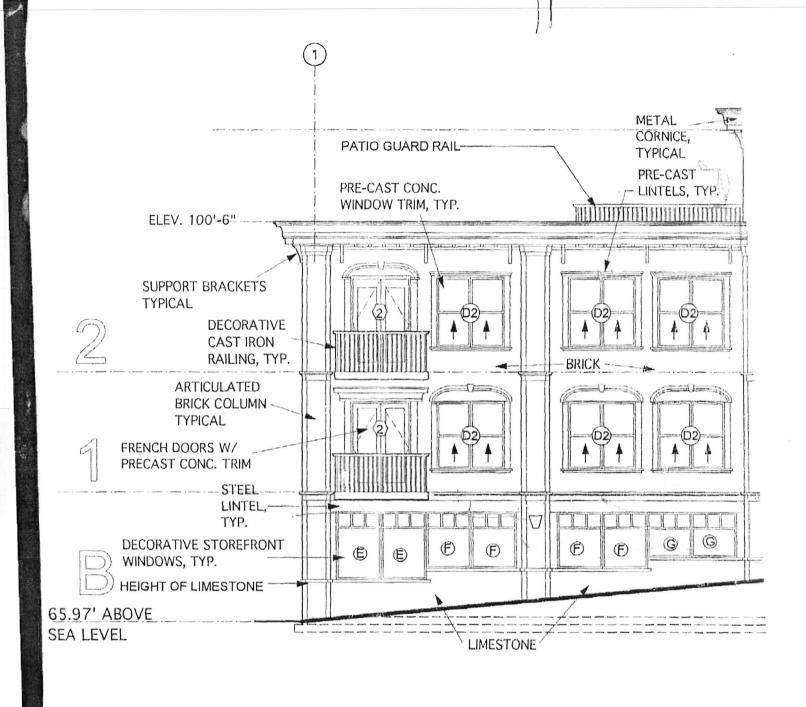
- Elevation from the corner of Mill Ave. and Finnegan Way
  - o The Planning staff recently referred to FG as being about 55.5 ft, which is the height if you measure the height from the <u>underground basement level</u>
  - o The height from the sidewalk is actually 34 Ft.

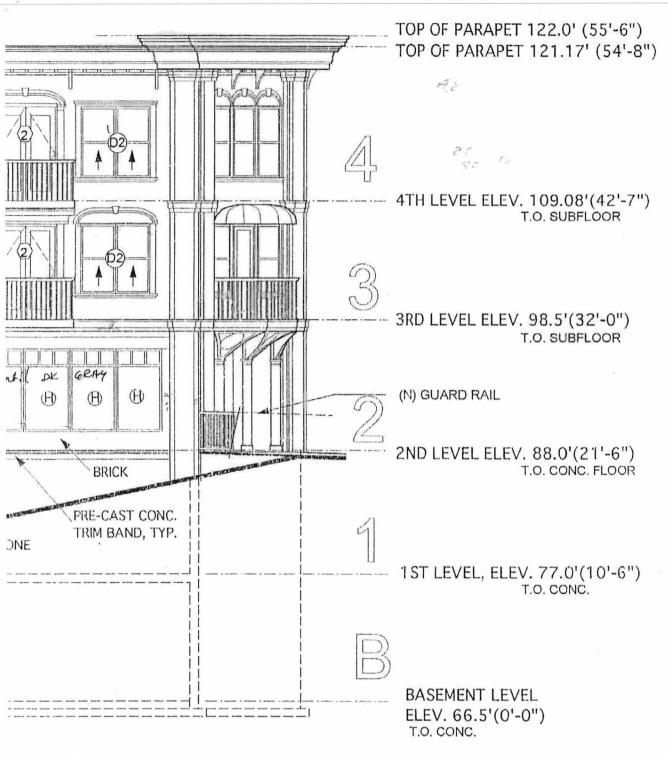
Fairhaven Gardens on corner of Mill and F	Finnegan
measurement pt.	ft above sea level
top of parapet	122
basement floor	66.5
sidewalk level	88
Actual ft.t from sidewalk to parapet	34
Actual ft. from basement floor to parapet	55.5

• Elevation from the corner of Mill Ave. and 11<sup>th</sup> St.

Fairhaven Gardens on corner of Mill an	d 11th st
measurement pt.	ft above sea level
top of parapet	100.6
sidewalk level	65.97
Actual ft. from sidewalk to parapet	34.63

It appears that the height of a buildings seem to change based on one's agenda. This has lead to a lot of frustration on the part of the public. It would be extremely helpful if everyone used one measurement definition for permitting, regulations and discussions.





1/8" =1'-0"

663 = 0



## RE: City Council Public Hearing Denis Hayner to: HAven

05/10/2012 11:59 AM

Thank you, Heather.

Please add my following comments to the record:

I can see the builders' interest in taller buildings - more building, more money. I can't see the business-owners' interest (as expressed at the April 19, 2012 Planning Board meeting) - their business comes mainly from people who don't live in Fairhaven; they come from elsewhere to shop here because of the ambiance. If the quaint, historical, by-the-bay atmosphere is lost to overbearing walls of tall buildings, the shoppers will have less incentive to come to Fairhaven.

Denis Hayner 1101 McKenzie Ave Unit 201 Bellingham, WA 98225

From: HAven@cob.org [mailto:HAven@cob.org]

**Sent:** Thursday, May 10, 2012 8:44 AM **Subject:** City Council Public Hearing

Heather Aven, Planning Secretary
City of Bellingham
Planning and Community Development

Tel: (360) 778-8345 Fax: (360)778-8302

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