

June 18, 2021

**VIA EMAIL (pcd@bainbridgewa.gov)**

Dylan Marcus, Planner  
City of Bainbridge Island  
Bainbridge Island, WA 98110

Re: ***Thomas White Project RUE & VAR  
PLN 51498 RUE / PLNS 51498 VAR  
3945 Lytle Rd NE, Bainbridge Island, WA 98110***

Dear Mr. Marcus,

My firm represents Mr. Astolfo Rueda, the owner of property located at 3702 Pleasant Beach Drive N.E., Bainbridge Island, WA 98110 ("Rueda Property"). I write with regard to the above referenced Reasonable Use Exception and Variance Permit ("Permit") sought by Thomas White, for his property located at 3945 Lytle Rd NE, Bainbridge Island, WA 98110 ("Project Site"). The Project Site is abutting and immediately to the North of the Rueda Property. For the reasons set out herein, Mr. White vehemently opposes the Permit as written.

As you are aware, a creek runs through the Project Site and enters the Rueda Property at the SE corner of the Project Site / NE corner of the Rueda Property. Mr. White's ongoing development activities on his property in the last few years (putting aside the proposed development) have significantly increased the flow of water through the creek and substantially increased the flow of water through the creek on the Rueda Property, resulting in substantial, excess storm water on Mr. Rueda's property and substantial damage to Mr. Rueda's foundation and patio. This excess storm water caused by Mr. White's failure to adequately maintain the creek will only be exacerbated by the proposed development sought by Mr. White through his Permit.

When Mr. White constructed his 2-story house on both banks of Lytle Creek, he promised he would protect the Creek and the wetland downstream as he restricted and choked the Creek's water flow and buffer on both sides of the Creek. In the years since, construction upstream has increased (including the teardown and rebuilding of Blakely Elementary). The City's inability to manage the associated water flow and Mr. White's indifference and failure to remove the sediment caused by his regular mowing of the tall grass in the creek and in the no-disturb area have caused downstream properties to be flooded on an annual basis, particularly Mr. Rueda's.

Several years ago, the flooding was so bad that the overflowing creek ripped off a fence on the Rueda Property. This year, the flooding from the Project Site resulted in two inches of storm water across the Rueda Property's northern edge (abutting the Project Site), despite Mr. Rueda's

extensive and expensive efforts to avoid such a flooding, including the installation of a two 12" culvert inlets and a 12' French drain.

I have spoken at length with City Attorney Joe Levan and Public Works Director Chris Wierzbicki regarding the Permit, and understand that pursuant to the completed site assessment review conducted at the Project Site, the City has reached the following conclusions:

- MR#4 Preserve all existing and natural drainage channels. Some applicable impacts from this project are anticipated to existing and natural drainage channels given the wetlands and stream course on site. Overflow stormwater and any other excess surface water not adequately treated on-site via the BMP's in MR #5 must still be safely discharged through the site in a manner that has no adverse impacts to **downstream properties**. In accordance with this requirement, where no natural channel is defined moderate shaping and grading to any existing drainage swale may be accomplished if existing drainage patterns are maintained.

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- It is COBI policy that the surfacing material for driveways abutting a public roadway shall match the material of the roadway (asphalt in this case) from the existing edge of pavement to the back of the right of way. An asphalt paved road approach shall be per COBI Design and Construction Standards and Specifications (DCSS) from edge of existing pavement on Lytle Road to back of right of way/property line (see COBI standard drawing 8-170).
  - The driveway/road approach will be assumed to require a driveway culvert (COBI drawing 8-175R,) unless it can be demonstrated to the city engineer that the absence of a culvert does not alter existing roadside drainage patterns and there is no risk of flooding damage to existing roadway prism or **adjacent properties** during the design storm event.

Emphasis added. The Permit as submitted FAILS to provide specific assurance or agreements required to avoid adverse impacts to downstream properties, including the Rueda property. Similarly, the Permit as submitted FAILS to provide specific assurance or agreements required to avoid altering existing roadside drainage patterns, as the overflow culvert on Pleasant Beach Drive NE fronting the Rueda Property and moving west is already over-taxed by Mr. White's development to date, and will only be pushed further by Mr. White's proposed development.

Mr. Rueda has retained the civil engineering firm, Core Design, with extensive experience with the damage caused to Mr. Rueda's property as a result of the excessive water proceeding through the stream on his property coming from the Project Site. The attached expert report from Core Design concludes that the proposed development "will only exacerbate the existing issues that have not been adequately addressed" by Mr. White. Mr. White's Permit fails to address the increased flooding on the Project Site over the last five years. Moreover, Mr. White's Permit fails to adequately

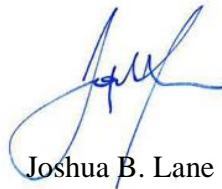
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address full infiltration or a flow control facility to mitigate the increased runoff from the proposed hard surfaces, and fails to provide a sufficient maintenance plan to ensure the stream channel is regularly maintained and freed of debris and sediment leading up to Rueda property. A copy of Core Design's report is attached.

The City cannot approve the Permit unless it is significantly amended to address the significant waterflow concerns addressed herein. Doing so would lead only to significant litigation and cost for the City, Mr. White, and Mr. Rueda, and would represent a wanton failure by the City to consider the reasonable concerns of its citizens and Mr. White's neighbors.

Very truly yours,

**AHLERS CRESSMAN & SLEIGHT PLLC**



Joshua B. Lane

JBL:  
cc: Astolfo Rueda