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I. INTRODUCTION

At Mr. Kanany's request, the City of Bonney Lake (City) interpreted its own municipal code, and the phrase "no ADU will be permitted in conjunction with any duplex," to mean that no accessory dwelling unit (ADU) will be permitted on the same lot as any duplex. Unsatisfied with this interpretation—and because he desires to locate ADUs on duplex properties he owns—Mr. Kanany brings this appeal pursuant to the Land Use Petition Act (LUPA) seeking reversal of the superior court's order affirming the City Hearing Examiner's Decision, which upheld the City's interpretation that the Bonney Lake Municipal Code (BLMC) unambiguously prohibits ADUs and duplexes on the same lot.

In an effort to circumvent the City's prohibition, Mr. Kanany attempts to displace the City's interpretation with his own and distract the Court with frivolous arguments and unfounded contentions. Mr. Kanany misinterprets the BLMC and fails to recognize that the matter before the Court is one of simple statutory interpretation, which is a pure legal issue for the Court's consideration.

This Court now stands in the shoes of the superior court and directly reviews the Hearing Examiner's Decision on the administrative record. Because Mr. Kanany fails to carry his burden under LUPA to prove that the

Hearing Examiner erroneously interpreted the law, engaged in unlawful procedures (or failed to follow a prescribed process), or violated Mr. Kanany's constitutional rights, this Court should affirm the superior court's order affirming the Hearing Examiner's Decision, which upheld the City's prohibition of ADUs and duplexes on the same lot.

II. COUNTERSTATEMENT OF THE CASE

A. Factual Background and Procedural History

Mr. Kanany owns two separate, nearly identical duplex properties located at 7513 191st Avenue East (191st Property), and 19210 75th Street East (75th Property) in Bonney Lake, Washington. *See* CP 57–70. Both properties are located in the City's medium-density residential district, the R-2 zone.¹ *See* CP 38–41. In addition to a duplex, each property also has a two-story, detached garage—the second levels of which Mr. Kanany wishes to use as ADUs. CP 199–205; *see Br. of Appellant* at 1. The City has never permitted ADUs on either property. *See* CP 57, 59, 63, 69.

Mr. Kanany has known that the City does not permit ADUs and duplexes on the same lot since at least 2009. *See* CP 33, 45–46. In August of that year, the City investigated and determined a violation of the BLMC,

¹ The City established the R-2 zone as a medium-density residential district “to create a stable environment for family life and to prevent intrusion by incompatible land uses.” BLMC 18.16.010.

concluding that Mr. Kanany was maintaining an illegal ADU on the same lot as his duplex located on the 191st Property. CP 45–46. The City gave Mr. Kanany notice of this code violation and allowed him a 45-day grace period for voluntary correction. *Id.* When the 45 days passed without any response from Mr. Kanany, the City issued a Notice of Civil Violation and imposed daily fines. CP 48–49. Still with no response, the City filed a lawsuit for monies owed and, on cross motions for summary judgment, the trial court denied Mr. Kanany’s motion and entered judgment in favor of the City. *See* CP 51–52. Mr. Kanany appealed and, on September 13, 2013, the parties gave oral argument before this Court; a decision is pending. *See Kanany v. City of Bonney Lake*, No. 42988-8-II (Wash. Ct. App. argued Sep. 13, 2013).²

In the context of this ongoing litigation, Mr. Kanany requested a code interpretation of BLMC 18.22.090(C)(1), CP 54, which in relevant part, reads:

C. Requirements. The creation of an accessory dwelling unit shall be subject to the following requirements, which shall not be subject to waiver or variance:

1. Number. One accessory unit shall be allowed per legal building lot as a subordinate use in conjunction with any single-family residence; no ADU will be permitted in

² That appeal concerns the application and constitutionality of the City’s code enforcement and civil violation system, and not the interpretation of the BLMC provisions regarding ADUs at issue before this Court.

conjunction with any duplex or multiple-family dwelling units.

BLMC 18.22.090(C)(1). On September 20, 2013, the City Community Development Director (Director) interpreted that section of the code to mean “that no ADU will be permitted anywhere on the same legal lot with any duplex or multiple-family dwelling unit.” CP 27. The Director reasoned that the BLMC unambiguously prohibits ADUs and duplexes on the same lot:

The phrase “in conjunction,” as applied in the context of BLMC 18.22.090, conveys the notion of a primary use and a subordinate use of a property. A property developed with a duplex or multi-family dwelling units cannot have an ADU as a subordinate use. The BLMC is unambiguous in its prohibition of ADUs and duplexes on the same legal lot. The stated intent of this section of the BLMC to increase density in order to better utilize existing infrastructure, community resources, and support public transit, and neighborhood retail and commercial services is met by allowing one ADU per legal building lot as a subordinate use in conjunction with any single-family residence.

Id.

On October 4, 2013, Mr. Kanany appealed the Director’s code interpretation to the City Hearing Examiner, and requested “the Hearing Examiner to narrowly construe the language of the exception in BLMC 18.22.090(C)(1) to apply only to an ADU that is conjoined or physically

attached to a duplex unit in the R-2 zone.” CP 32–41. The parties participated in a public hearing on November 15, 2013. CP 187–223.

Subsequently, the Hearing Examiner denied Mr. Kanany’s appeal and upheld the Director’s code interpretation.³ CP 241–52. The Hearing Examiner concluded that “Section 18.22.090(C)(1) of the BLMC is not ambiguous and is clear from the ordinary meaning of its language and context,” and that the code “clearly prohibits ADUs in conjunction with any duplex.” CP 248. After the Hearing Examiner denied a Request for Reconsideration, CP 255–59, Mr. Kanany filed a LUPA petition in superior court. CP 1–3.

After hearing oral argument, reviewing the certified record, pleadings, and all other records and files, the superior court affirmed the Hearing Examiner’s Decision upholding the City’s interpretation. CP 273–74. Mr. Kanany appealed to this Court. CP 271–72.

³ The Hearing Examiner issued his original Decision on November 25, 2013. CP 224. After the City informed the Hearing Examiner that the November 25 Decision mistakenly listed the City Council as the next avenue for appeal, CP 236–37, the Hearing Examiner issued a Corrected Report and Decision on November 27, 2013. CP 241.

III. ARGUMENT

A. Standard of Review

The Land Use Petition Act is the “exclusive means” for judicial review of land use decisions. RCW 36.70C.030; *Conom v. Snohomish Cnty.*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005). The Court reviews the land use decision made by the decision-maker with the highest level of authority to make the decision, including those with authority to hear appeals. RCW 36.70C.020(2); *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App. 461, 474, 24 P.3d 1079 (2001). In this case, the Decision of the Hearing Examiner to deny Mr. Kanany’s code interpretation appeal is the subject of this Court’s review. As such—and under LUPA—this Court “stands in the shoes of the superior court” and reviews the Hearing Examiner’s Decision on the basis of the administrative record. *Pavlina v. City of Vancouver*, 122 Wn. App. 520, 525, 94 P.3d 366 (2004).

This Court may reverse the Hearing Examiner’s Decision only if Mr. Kanany carries his burden under one of the following standards:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1)(a)–(f). Mr. Kanany adequately briefs only three of the LUPA standards: RCW 36.70C.130(1)(a) (unlawful procedures), (b) (erroneous interpretation of the law), and (f) (constitutional violation). These three standards present questions of law, which this Court reviews *de novo*. *Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006) (citation omitted).

Mr. Kanany does little more than mention the other three LUPA standards—RCW 36.70C.130(1)(c), (d), and (e)—in passing without evidence, support, or argument. *See Br. of Appellant* at 2, 7, 10–11, 17, 19 n.27, 29, 30. Pursuant to RCW 36.70C.130(1)(c) and (d) there are no issues related to substantial evidence or any facts to which the law would be applied; the interpretation of the City’s code is a pure legal issue. Mr. Kanany also cites to RCW 36.70C.130(1)(e), *see Br. of Appellant* at 17, but does not even attempt to explain how the land use decision was outside the

Hearing Examiner’s authority or jurisdiction. This Court should not consider inadequately briefed or discussed issues: “[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996); *see State v. Thomas*, 150 Wn.2d 821, 869, 83 P.3d 970 (2004).

B. The Hearing Examiner properly interpreted BLMC 18.22.090(C)(1).

Pursuant to RCW 36.70C.130(1)(b), the Hearing Examiner correctly interpreted BLMC 18.22.090(C)(1) because: (1) the BLMC unambiguously prohibits ADUs and duplexes on the same lot; (2) even if this Court finds that the BLMC is ambiguous, the Court should defer to the Director’s—not Mr. Kanany’s—interpretation of the law; and (3) Mr. Kanany’s proposed interpretation contradicts and misconstrues the BLMC.

1. The BLMC is unambiguous.

(a) *The unambiguous, plain meaning of BLMC 18.22.090(C)(1) prohibits any and all ADUs from occupying the same lots as duplexes.*

City ordinances are construed in the same manner as state statutes and this Court must give unambiguous ordinances their plain meaning. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); *Wenatchee Sportsmen Ass’n v. Chelan Cnty.*, 141 Wn.2d 169, 175, 4 P.3d 123 (2000). Where the plain language of a statute is unambiguous, and legislative intent

is therefore apparent, the ordinance may not be construed otherwise. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citation omitted). The Court’s inquiry does not stop with a literal, word-by-word interpretation bereft of context and the plain meaning of an ordinance may be gleaned from all that the legislative body has said in the statute at issue, as well as related statutes that disclose legislative intent about the provision in question. *See Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

BLMC 18.22.090 splits the City’s ADU regulations into three interrelated subsections: (A) the intent behind allowing ADUs; (B) the permitting process for establishing ADUs; and (C) the requirements for building ADUs. *See* BLMC 18.22.090.⁴ Subsection (C) of BLMC 18.22.090 lays out eight separate ADU requirements, which according to that subsection, “shall not be subject to waiver or variance.” BLMC 18.22.090(C). The first requirement, in Subsection (C), which is at issue in this appeal, delineates the number of ADUs allowed with single-family residences and duplexes:

1. Number. One accessory unit shall be allowed per legal building lot as a subordinate use in conjunction with any single-family residence; no ADU will be permitted in

⁴ BLMC 18.22.090 is attached as *Appendix A* for the convenience of the Court.

conjunction with any duplex or multiple-family dwelling units.

BLMC 18.22.090(C)(1). On its face, the Code affirmatively allows one ADU to be built on the same lot as any single-family residence. With regard to duplexes, the Code prohibits all ADUs by stating that no ADU will be permitted in conjunction with any duplex.

While BLMC 18.22.090(C)(1) envisions ADUs and single-family residences together, the phrase “no ADU will be permitted in conjunction with any duplex” does not contemplate allowing ADUs and duplexes on the same lot. Simply put, because the phrase “no ADU” is not subject to waiver or variance, it means “no ADU.” It does not mean “one ADU,” it does not mean “some ADUs,” it does not mean “one attached ADU,” and it does not mean “one detached ADU.” The provision in question means that no ADU will be permitted on the same lot as a duplex, and as such, BLMC 18.22.090(C)(1) is unambiguous on its face.

(b) The Code unambiguously allows duplexes only with single-family residences.

In addition to BLMC 18.22.090(C)(1), other related code provisions only discuss ADUs in the context of single-family homes. For example, the Code defines “Accessory Dwelling Units” in reference to single-family dwellings and does not discuss duplexes. BLMC 18.04.010 (stating that an

ADU “is a second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate structure on the same lot as the primary dwelling”). Likewise, the design requirement under BLMC 18.22.090(C)(5) states that ADUs “must be designed to maintain the appearance of the existing single family residence.” BLMC 18.22.090(C)(5). The subsection delineating the intent behind the provision of ADUs in the City also discusses ADUs in the context of single-family residences. BLMC 18.22.090(A)(5) (stating that ADUs are intended to protect the “single-family residential appearance by ensuring that the ADUs are installed in a manner compatible under the conditions of this section”). These provisions, along with BLMC 18.22.090(C)(1), reinforce the interpretation that ADUs are allowed only on lots with single-family homes.

(c) *The dictionary definition of “in conjunction” supports the City’s interpretation.*

While it is not appropriate to ignore the context of BLMC 18.22.090(C)(1) in favor of a literal, word-by-word interpretation of that provision, because “in conjunction with” is not defined, the Court may also consult a dictionary. *Cregan v. Fourth Mem’l Church*, 175 Wn.2d 279, 285, 285 P.3d 860 (2012). The ordinary dictionary definition of “conjunction” is as follows: “1. Act of conjoining, or state of being conjoined; union; **association**; combination. 2. An instance of conjunction; union;

association. 3. Occurrence together; concurrence, as of events.” *Webster’s New Int’l Dictionary* 565 (2d ed. 1950) (emphasis added). When a word has alternative meanings, the context of that word may be used to guide the choice among them. *See MCI Tel. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 226–28, 114 S. Ct. 2223, 129 L. Ed. 2d 182 (1994). The context shows that the definition of “conjunction,” is not limited to physical attachment, allows for the co-existence of objects or events together in a place or time, and conforms to the Director’s interpretation prohibiting ADUs and duplexes on the same lot. Even the California case selectively quoted and cited by Mr. Kanany—discussing the standard dictionary definition of “in conjunction with”—supports a finding that ADUs are not limited to those that are physically attached: “The phrase ‘in conjunction with’ means conjointly, **in association**, or **in unison**.” *Orange Unified Sch. Dist. v. Rancho Santiago Cmty. Coll. Dist.*, 54 Cal. App. 4th 750, 763, 62 Cal. Rptr. 2d 778 (1997) (emphasis added) (citing *Webster’s New Collegiate Dictionary* 237 (1979 ed.); *Black’s Law Dictionary* 273 (5th ed. 1979); *see also Br. of Appellant* at 23).

Both the Director and the Hearing Examiner analyzed BLMC 18.22.090(C)(1) according to its unambiguous language and supporting context, and properly found that ADUs are not allowed on the same lot as duplexes. *See CP 26–27, 248–49*. Because the unambiguous, plain language

of BLMC 18.22.090(C)(1) supports the Hearing Examiner's Decision, Mr. Kanany fails to prove an erroneous interpretation of the law pursuant to RCW 36.70C.130(1)(b).

2. Even if this Court finds the BLMC to be ambiguous, the Court should defer to the Director's interpretation.

Should the Court find ambiguity in BLMC 18.22.090(C)(1), LUPA grants substantial deference to the Director's interpretation prohibiting ADUs and duplexes on the same lot. RCW 36.70C.130(1)(b) (stating that the court must allow "for such deference as is due the construction of a law by a local jurisdiction with expertise"); see *Pinecrest Homeowners Ass'n v. Cloninger Assocs.*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004). "[I]n any doubtful case, the court should give great weight to the contemporaneous construction of an ordinance by the officials charged with its enforcement." *Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn. App. 118, 126-27, 186 P.3d 357 (2008). Importantly, the law does not require strict construction of zoning ordinances in favor of property owners, see *Dev. Servs. v. City of Seattle*, 138 Wn.2d 107, 117, 979 P.2d 387 (1999), and LUPA gives the City's interpretation of its own zoning ordinances substantial deference. RCW 36.70C.130(1)(b).

Here, the Director examined the plain language, dictionary definition, and context of BLMC 18.22.090(C)(1), and applied his local

expertise to determine that the BLMC means that “no ADU will be permitted anywhere on the same legal lot with any duplex or multiple-family dwelling unit.” CP 27. While Mr. Kanany inferentially argues that BLMC 18.22.090(C)(1) is ambiguous by proposing his own interpretation, he utterly fails to explain why this Court should displace the Director’s interpretation with Mr. Kanany’s or why the Court should not defer to the Director. As such, if the Court finds BLMC 18.22.090(C)(1) to be ambiguous, it should defer to the Director’s interpretation and find that Mr. Kanany fails to carry his burden pursuant to RCW 36.70C.130(1)(b).

3. Mr. Kanany’s proposed interpretation misconstrues and contradicts the BLMC.

(a) Mr. Kanany makes an improper and unsupported distinction between attached and detached ADUs.

Mr. Kanany mistakenly believes that the phrase “in conjunction with” means “where an ADU would be physically attached or connected to a duplex unit.” *Br. of Appellant* at 23. While Mr. Kanany states that his interpretation “saves the exception” in BLMC 18.22.090(C)(1) from “swallowing” an “outright permitted use, and denying the public an affordable supply of housing[,]”⁵ he is in fact attempting to create an illogical

⁵ Mr. Kanany’s use of this general rule fails under both BLMC 18.02.030 (“Where more than one provision applies to the same aspect of a proposed use or development; the more restrictive requirement shall apply.”), and BLMC 18.02.050 (“In case of

distinction between attached and detached ADUs, which the code does not allow. *Br. of Appellant* at 24.

Mr. Kanany reads a distinction into the code where none exists by inferring that the code treats (or should treat) attached and detached ADUs differently. The code, however, defines an ADU based on its characteristics and use, and not whether it is attached or detached. BLMC 18.04.010. In fact, the BLMC’s definition of an “Accessory Dwelling Unit” specifically allows ADUs to be attached to or detached from a single-family residence:

‘Accessory dwelling unit’ is a second dwelling unit **either** in or **added to an existing single-family detached dwelling, or in a separate structure on the same lot as the primary dwelling** for use as a complete, independent living facility with provision within the accessory unit for cooking, eating, sanitation, sleeping and entry separate from that of the main dwelling. Such a dwelling is an accessory use to the main dwelling. Accessory units are also commonly known as ‘mother-in-law’ units or ‘carriage houses.’

BLMC 18.04.010 (emphasis added). The definition contemplates ADUs as either an addition to (or in) an existing single-family home or as a separate structure, and does not create different types of ADUs. If the attached or detached structure is used “as a complete, independent living facility with

inconsistency or conflict, regulations, conditions or procedural requirements that are specific to an individual land use shall supersede regulations, conditions or procedural requirements of general application.”). Stating the “general rule” that ADUs are an outright permitted use is irrelevant and misleading. *See infra* Part III.B.3.c.

provision within the accessory unit for cooking, eating, sanitation, sleeping and entry separate from that of the main dwelling,” it is an ADU. *Id.* The Code simply gives owners of single-family homes the option of adding an ADU as either an attached or detached structure, does not distinguish between the two, and does not require or prohibit physical attachment between an ADU and the primary dwelling.

Furthermore, BLMC 18.22.090(C)(1) uses the phrase “in conjunction with” twice in the same sentence, once to allow ADUs as a subordinate use with single family homes, and again as a prohibition against the provision of ADUs with duplexes:

One accessory unit shall be allowed per legal building lot as a subordinate use **in conjunction with** any single-family residence; no ADU will be permitted **in conjunction with** any duplex or multiple-family dwelling units.

BLMC 18.22.090(C)(1) (emphasis added). As such, that phrase must be given the same meaning each time it is used in BLMC 18.22.090(C)(1). *See State v. Rice*, 116 Wn. App. 96, 100, 64 P.3d 651 (2003). When a legislative body uses “a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using it in the same sense, unless there be something in the context or the nature of things to indicate that it intended a different

meaning thereby.” *Id.* Because the phrase “in conjunction with” concerns the same subject matter (the provision of ADUs), and there is nothing in the context of the code showing that the City intended a different meaning for that phrase, it should be given the same meaning each time it appears in the BLMC and apply to all ADUs.

To illustrate this principle, the City’s interpretation corresponds to the language of the Code and does not distinguish between attached and detached ADUs:

One accessory unit shall be allowed per legal building lot as a subordinate use **[attached to or detached from]** any single-family residence; no ADU will be permitted **[attached to or detached from]** any duplex or multiple-family dwelling units.

Using the phrase “in conjunction with” to refer to both attached and detached ADUs maintains the Code’s internal consistency. Mr. Kanany’s interpretation, on the other hand, would result in the unintended consequence of prohibiting detached ADUs with single-family residences by only allowing an ADU to be attached to a single-family residence:

One accessory unit shall be allowed per legal building lot as a subordinate use **[physically attached or connected to]** any single-family residence; no ADU will be permitted **[physically attached or connected to]** any duplex or multiple-family dwelling units.

Because BLMC 18.04.010 allows ADUs to be separate or attached structures, it would be contrary to proper statutory interpretation to conclude that the phrase “in conjunction with” refers only to physically attached ADUs as Mr. Kanany suggests.

(b) Prohibiting ADUs on the same lot as duplexes does not conflict with the City’s Comprehensive Plan or other policies.

Mr. Kanany makes the unsupported assertion that the Hearing Examiner’s Decision is somehow inconsistent with the City’s Comprehensive Plan and legislative intent. *See Br. of Appellant* at 22–23. Mr. Kanany infers that because the City desires to increase affordable housing, an ADU must be allowed on the same lot as a duplex. *Id.* There is simply no conflict between a desire to increase affordable housing and the City’s determination that ADUs are not allowed on the same lot as a duplex. In fact, allowing ADUs as a subordinate use in conjunction with single-family homes does increase density and provide affordable housing opportunities. Like with all permitted uses, the City regulates how and where ADUs may be constructed.

Even assuming, for the sake of argument, that some conflict does exist, Mr. Kanany misunderstands the scope and interaction of the BLMC, the comprehensive plan, and other regulations. “Where there are conflicts between a general comprehensive plan and a specific zoning code, the

conflicts must be resolved in the zoning code's favor." *Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). A specific zoning ordinance such as BLMC 18.22.090(C)(1), "will prevail over an inconsistent comprehensive plan." *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873-74, 947 P.2d 1208 (1997). If the Comprehensive Plan's goals and policies do somehow conflict with the Hearing Examiner's Decision that ADUs are not allowed on the same lot as duplexes, which Mr. Kanany fails to show, BLMC 18.22.090(C)(1) is express and unambiguous, and that specific section of the code must prevail over the general comprehensive plan.

(c) *Mr. Kanany's argument that a conflict exists between current and former sections of the BLMC is irrelevant, false, and misleading.*

Former BLMC 18.16.020(A), which the City repealed in 2011, is irrelevant to the interpretation at issue in this appeal. CP 101-02. The City interpreted its current code to prohibit ADUs and duplexes on the same lot; Mr. Kanany fails to explain how a repealed section of the code has any bearing on the City's interpretation of its zoning code in 2013. *See Br. of Appellant* at 20-22.

Furthermore, Mr. Kanany's assertions that the former code permitted ADUs on the same lot as duplexes is simply wrong. Prior to its

repeal in 2011—and under the heading “Uses permitted outright”—BLMC 18.16.020(A) listed ADUs as one of four residential uses permitted in R-2 zones. CP 101-02. The former section’s heading, “Uses permitted outright,” however, was not part of the City’s zoning code and had no legal effect. BLMC 1.01.060 (“Title, chapter and section headings contained in this code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section of this code.”). Additionally, Mr. Kanany’s quotation omits the first sentence of former BLMC 18.16.020, see *Br. of Appellant* at 20, which stated that uses permitted in the R-2 zone, including ADUs, were subject to other regulations:

The following uses are permitted in an R-2 zone, **subject to the off-street parking requirements, bulk regulations and other provisions and exceptions set forth in this code**

CP 101-02 (emphasis added). BLMC 18.22.090(C)(1) provided precisely such a limitation by prohibiting ADUs on the same legal lot as duplexes. Reading former BLMC 18.16.020(A) in its entirety reveals the extent of Mr. Kanany’s omissions. *Id.* While irrelevant to the interpretation of the City’s current code, Mr. Kanany’s selective quotation of a repealed code provision is also a distortion of the truth.

(d) *The BLMC's Land Use Matrix also specifically prohibits ADUs on the same lot as duplexes.*

Mr. Kanany's argument that the City's Land Use Matrix (Matrix) allows ADUs with uses other than a single-family home is also flat wrong. In 2011, the City replaced multiple sections of the BLMC with a Matrix that identifies permitted uses within each zone. BLMC 18.08.010-.020.⁶ The Matrix is one piece of the City's overall zoning scheme, which states that "[a]ll applicable requirements shall govern a use whether or not they are cross referenced in the matrix. To determine whether a particular use is allowed in a particular zoning district and location, all relevant regulations must also be consulted in addition to this matrix." BLMC 18.08.010(G).

While the Matrix does allow ADUs and duplexes in the R-2 zone, nothing in the Code indicates that any two permitted uses must be allowed on the same lot, and BLMC 18.22.090(C)(1) specifically prohibits ADUs from occupying the same lot as a duplex. In fact, the Matrix subjects ADUs in the R-2 zone to a specific condition in a footnote that states: "No accessory dwelling units are allowed in conjunction with a duplex." BLMC 18.08.020; BLMC 18.08.010(F); *Br. of Appellant* at 25.

⁶ The Matrix, Chapter 18.08 BLMC, is attached as *Appendix B* for the convenience of the Court.

Mr. Kanany also appears to argue that ADUs must be allowed on the same legal lot as a townhouses because the “townhouse” designation does not have a footnote prohibiting ADUs.⁷ *See Br. of Appellant* at 24–25. The BLMC allows ADUs on the same lots as single-family homes only and does not permit ADUs with townhouses, duplexes, or any other use. BLMC 18.22.090(C)(1).⁸

C. The Hearing Examiner engaged in lawful procedures and followed the prescribed process under the BLMC.

Mr. Kanany fails to prove that the Hearing Examiner engaged in unlawful procedure or failed to follow a prescribed process pursuant to RCW 36.70C.130(1)(a) because the City does in fact have appropriate procedures in place and the Hearing Examiner followed those procedures. Chapter 14.120 BLMC.

Cities have statutory authorization pursuant to RCW 35A.63.170 to establish a hearing examiner system and cities may vest in a hearing

⁷ The following are the other types of uses permitted in both or either the R-2 and R-3 zones, which under Mr. Kanany’s flawed logic, would be allowed to have an ADU because they lack specific footnote prohibitions: adult family homes; apartments/condominiums; boarding Homes; mobile/manufactured homes; nursing homes and assisted living; residential care facilities; elementary schools; preschools; libraries; parks, open spaces and trails; pocket parks; private meeting halls; public meeting halls; religious institutions; public utility facilities; and wireless communication facilities. *See* BLMC 18.08.020.

⁸ While Mr. Kanany states that the Matrix does not permit single-family residences in the R-2 and R-3 zones, *Br. of Appellant* at 29 n.40, more than 80 percent of the lots in the R-2 zone are single-family homes, while 21 percent of the lots in the R-3 zone are single family homes. CP 195.

examiner the power to hear and decide appeals of administrative determinations, such as code interpretations. *See* RCW 35A.63.170(1)(b). In establishing a hearing examiner system, the City must “prescribe procedures to be followed by a hearing examiner.” RCW 35A.63.170(1). The statute does not detail the kind, scope, or even the minimum level of procedures to be adopted and no court has ever determined that a city must adopt anything specific.

The City has adopted hearing examiner procedures for appeals of various City determinations, including code interpretations, BLMC 14.120.020, and it is undisputed that both the City and the Hearing Examiner complied with those procedures. The BLMC describes what kinds of decision and determinations may be appealed; how to appeal; the required contents of an appeal; the time for filing an appeal and relevant deadlines; the effect of an appeal on a City decision; the requirement that the appellant be sent notice of the date, time, and place for the public hearing (including the deadline for submission of written comments); and the requirement that the hearing be under oath and recorded. BLMC 14.120.020; CP 238–39. Mr. Kanany does not dispute that the City and the Hearing Examiner complied with these procedures.

Mr. Kanany appears to confuse the statute's requirement that the City prescribe hearing examiner procedures with the idea that the City must adopt specific rules for the hearings themselves. *See Br. of Appellant* at 11–12, 16–17. While Mr. Kanany argues that the City must adopt robust rules of procedure governing the hearing conducted before its Hearing Examiner, *Br. of Appellant* at 16–18, the statute does not go that far and does not require the City to adopt any rules regulating the conduct of hearings.

Mr. Kanany also inappropriately cites to the municipal codes of large cities such as Seattle and Bellevue, as well as counties—encompassing multiple towns and cities—to argue that the City must adopt formal rules of procedure for hearings before the Hearing Examiner. *Br. of Appellant* at 12 n.25. What these other municipalities do has no bearing on what RCW 35A.63.170(1) requires. The statute simply does not require the City to do anything it has not already done.

Additionally, Mr. Kanany fails to support his conclusory statement that the Hearing Examiner's Decision failed to set forth the manner in which the decision would carry out and conform to the City's comprehensive plan. *See Br. of Appellant* at 18–19. RCW 35A.63.170(3), in relevant part, requires the following:

Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's comprehensive plan and the city's development regulations.

RCW 35A.63.170(3). The Hearing Examiner's Decision complies with that statute because it was in writing, CP 241-52, included findings and conclusions based on the record, CP 244-50, discussed the relationship of the Decision to the Comprehensive Plan and development regulations, CP 247, 249, and essentially affirms the Director's interpretation, CP 250, which also discusses the City's development regulations. CP 35-37.

Despite Mr. Kanany's list of alleged procedural errors—lack of pre-hearing, hearing, and post-hearing procedures, denial of continuance request, lack of rules of evidence, the exercise of courtroom control, and lack of rules governing reconsideration—the Hearing Examiner conducted a full and fair hearing, which was appropriate to the straightforward code interpretation at issue. Additional procedures were neither required nor necessary under RCW 35A.63.170 and further irrelevant testimony from witnesses not concerning the interpretation of the BLMC would not have changed the result of the hearing.

Furthermore, even if any of the Hearing Examiner's actions do constitute error, they were entirely harmless. LUPA requires proper process unless the "error was harmless." RCW 36.70C.130(1)(a); *Young v. Pierce Cnty.*, 120 Wn. App. 175, 188, 84 P.3d 927 (2004). Harmless error is one that is not prejudicial to the rights of the party assigning the error, and does not affect the outcome of the case. *City of Bellevue v. Lorang*, 140 Wn.2d 19, 32, 992 P.2d 496 (2000); *see also Tugwell v. Kittitas Cnty.*, 90 Wn. App. 1, 13, 951 P.2d 272 (1997) (holding that the omission of statutorily required statement of factors was a harmless technical violation). Mr. Kanany fails to explain how any of the alleged errors were prejudicial or remotely affected the outcome of the hearing. *See Br. of Appellant* at 16–18.

D. The Hearing Examiner's Decision did not violate Mr. Kanany's constitutional rights.

Mr. Kanany fails to carry his burden to prove a violation of his constitutional rights under RCW 36.70C.130(1)(f) because he does not provide any authority, citation, or argument in support of the proposition that a code interpretation alone can deprive a landowner of due process. Mr. Kanany has not been deprived of any right; the City merely interpreted its preexisting code.

Regardless, when the City exercises its police power "regarding property use, such as in zoning and building permit requirements, [the City]

may legitimately impose many types of restrictions or development conditions on a landowner.” *Robinson v. City of Seattle*, 119 Wn.2d 34, 56, 830 P.2d 318 (1992). Furthermore, the imposition of “these conditions, regulations, or restrictions are not per se violative of substantive due process or the taking clause.” *Id.* Mr. Kanany fails to prove—or present any evidence, citations, or valid argument—that the City’s lawfully enacted regulation on ADUs violates any constitutional rights.

Mr. Kanany’s other constitutional arguments also fail. *See* CP 187–223. Fundamentally, procedural due process requires notice and an opportunity to be heard, *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 768, 871 P.2d 1050 (1994), which Mr. Kanany received: he was given notice at least 10 days before the hearing, *see* CP 133, and was allowed to present written and oral testimony at the hearing. *See* CP 187–223. The Hearing Examiner conducted a fundamentally fair hearing and properly exercised his discretion to focus Mr. Kanany and his witnesses on the simple code interpretation issue at hand. Contrary to Mr. Kanany’s conclusory assertions, *see Br. of Appellant* at 12–13, the exercise of courtroom control was entirely within the discretion of the Hearing Examiner and Mr. Kanany fails to demonstrate any violation of due process.

Mr. Kanany also appears to argue that duplexes are a constitutionally protected class suffering discrimination: “The City’s Code Interpretation . . . borders on patently disparate treatment of duplexes and Townhouses under the City zoning code which would be unconstitutional . . .” *Br. of Appellant* at 28. While the BLMC in fact treats townhouses and duplexes the same with respect to ADUs (prohibited uses), Mr. Kanany fails to explain any reason why the City could not treat those two types of housing differently, as it is entirely within the City’s discretion to control different uses of land under its zoning code. *See* RCW 35A.63.100 (granting cities the power to regulate the use of private land, buildings, structures, open spaces, etc.).

Without citation or argument, Mr. Kanany also states that the City’s zoning regulation somehow constitutes a taking of a valuable property right. *See Br. of Appellant* at 24. A property owner alleging that a land use regulation constitutes a taking must establish that the challenged regulation destroys a fundamental attribute of property ownership, such as the right to make some economically viable use of the property. *Guimont v. Clarke*, 121 Wn.2d 586, 605, 854 P.2d 1 (1993). Mr. Kanany fails to explain how the City’s ADU restriction destroys a fundamental attribute of property

ownership when an economically viable duplex remains on the property for his personal use or lease.

E. The City is entitled to its attorneys' fees on appeal.

Pursuant to RCW 4.84.370, the City requests an award of its reasonable attorneys' fees and costs incurred in this appeal. Under RCW 4.84.370, a city that prevails before the local administrative agency, the superior court, and the appellate court, is entitled to an award of reasonable attorneys' fees and costs incurred on appeal. *Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 413-14, 120 P.3d 56 (2005); *Witt v. Port of Olympia*, 126 Wn. App. 752, 759, 109 P.3d 489 (2005); *Overhulse Neighborhood Ass'n v. Thurston Cnty.*, 94 Wn. App. 593, 601, 972 P.2d 470 (1999).

In the case at hand, the City prevailed on the merits before the local administrative agency, CP 225, 233, 242, 250, 258, and the superior court, CP 273-74. If the City prevails or substantially prevails before this Court, it is entitled to attorneys' fees and costs for this appeal under RCW 4.84.370.

IV. CONCLUSION

For the foregoing reasons, Mr. Kanany fails to carry his burden to prove a violation of any of the six LUPA standards, RCW 36.70C.130(1)(a)-(f), and the City of Bonney Lake respectfully requests this Court to affirm

the superior court's order, which affirmed the Hearing Examiner's Decision upholding the City's interpretation of BLMC 18.22.090(C)(1).

RESPECTFULLY SUBMITTED this 4th day of September, 2014.

PORTER FOSTER RORICK LLP



By: Mark D. Orthmann, WSBA #45236
Attorneys for City of Bonney Lake

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18.22.090 Accessory dwelling units.

A. Intent. Accessory dwelling units (hereinafter referred to as "ADUs") are intended to:

1. Provide homeowners with a means of providing companionship and security.
2. Add affordable units to the existing house supply.
3. Make housing units within the city available to moderate-income people.
4. Provide an increased choice of housing that responds to changing needs, lifestyles (e.g., young families, retired), and modern development technology.
5. Protect neighborhood stability, property values, and the single-family residential appearance by ensuring the ADUs are installed in a compatible manner under the conditions of this section.
6. Increase density in order to better utilize existing infrastructure and community resources, support public transit, neighborhood retail and commercial services.

B. Procedures. Any property owner seeking to establish an ADU in the city of Bonney Lake shall apply for an ADU permit (Type 1 permit – see Chapter 14.30 BLMC).

1. Application. A complete application shall include a properly completed application form, floor and structural plans for modification, and fees as prescribed in subsection (B)(2) of this section.
2. Fees. An applicant shall pay an application fee of \$500.00. Such fee is related to the processing, inspection, notification, recording and enforcement and is in addition to any other required building permit review fees. Upon sale of the property, a new owner shall be required to register the ADU, paying a re-authorization fee of \$100.00.
3. Criterion. The criterion for issuance of an ADU permit shall be in compliance with this section.
4. Memorandum of Deed Restriction (MDR). Upon issuance of the ADU permit, the property owner shall record with the Pierce County auditor a notarized MDR. Such MDR shall be in a form as specified by the director(s), and shall include as a minimum: (a) the legal description of the property which has been permitted for the ADU; (b) the registration-upon-purchase requirement contained in subsection (B)(2) of this section; (c) the requirements contained in subsection (C) of this section; (d) the requirements of BLMC 13.04.070 and 13.12.100 regarding connection charges applicable in the event the property upon which the ADU is located is sold, platted or otherwise segregated from the property upon which the primary residence is located; and (e) any restrictions imposed by the director(s) to ensure compliance with this section. The property owner shall submit proof that the MDR has been recorded prior to inspection and issuance of a certificate of occupancy by the building inspector. The MDR shall run with the land as long as the ADU is maintained on the property.
5. Inspection. After the city has (a) received a completed application and application fees, (b) approved an ADU permit, and (c) received a recorded MDR, the city shall inspect the property to confirm that the minimum and maximum size limits, required parking and design standards, and all applicable building, health, safety, energy and electrical codes are met. Satisfactory inspection of the property shall result in the issuance of a certificate of occupancy.
6. Notification. Upon a complete application being submitted, the city will post the property with a standard notice of land use application enclosing requirements for the ADU and a copy of the MDR

signed by the applicant.

C. Requirements. The creation of an accessory dwelling unit shall be subject to the following requirements, which shall not be subject to waiver or variance:

1. Number. One accessory unit shall be allowed per legal building lot as a subordinate use in conjunction with any single-family residence; no ADU will be permitted in conjunction with any duplex or multiple-family dwelling units. Either the principal residence or the unit designed to become the ADU may be constructed first. If the unit designed to be the ADU is built first, it shall be considered the primary residence until a second unit is built and shall be subject to the utility connection fees provided for in BLMC 13.04.070 and 13.12.100. The second unit built shall be considered an ADU for purposes of the utility connection fee exemptions provided for in BLMC 13.04.070(C)(2)(c) and 13.12.100(C).

2. Size. The accessory unit shall not contain less than 300 square feet as part of a main residential unit, and no less than 450 square feet as part of a detached unit, and not more than 1,200 square feet, excluding any related garage and stair areas.

3. Percentage of Total Square Footage. In addition to the above size limit, the square footage of any accessory dwelling unit, attached or detached, shall not exceed 45 percent of the total square footage of the primary and accessory residences, excluding any related garage and stair areas.

4. Off-Street Parking Requirements. There shall be one on-site parking space in a carport, garage or designated improved space provided for the accessory dwelling unit in addition to that which is required for the primary residence.

5. Design. Accessory dwelling units shall be designed to maintain the appearance of the existing single-family residence. If the accessory unit extends beyond the current footprint of the principal residence, such an addition shall be compatible with the existing color, roof pitch, siding and windows. If an accessory unit is detached from the main building, it must be compatible with the existing color, roof pitch, siding and windows of the principal residence. If the ADU is attached, only one entrance to the main building will be permitted in the front of the principal residence, and a separate entrance for the accessory unit shall be located on the side or rear of the building not visible from the street.

6. Applicable Related Codes. The accessory dwelling unit shall meet all technical code standards including building, electrical, fire, plumbing and other applicable code requirements.

7. MDR. Upon issuance of an ADU permit by the city, the property owner must record with the Pierce County auditor an MDR. Specific procedures are identified in subsection (B)(4) of this section.

8. Legalization of Nonconforming ADUs. All owners of illegal ADUs shall be required to either legalize the unit or remove it. (Ord. 1221 § 5, 2007; Ord. 988 § 2, 2003; Ord. 747A § 1, 1998; Ord. 747 § 1, 1997).

Chapter 18.08 LAND USE MATRIX

Sections:

- 18.08.010 Interpretation of land use matrix.
- 18.08.020 Land use matrix.
- 18.08.030 Cannabis collective gardens and dispensaries.

18.08.010 Interpretation of land use matrix.

- A. The land use matrix in this chapter identifies uses permitted in each individual zoning district. The zoning district is located on the vertical column and the use is located on the horizontal row of this matrix.
- B. If the box at the intersection of the column and the row is empty, the use is not permitted in that district.
- C. If the letter "P" appears in the box at the intersection of the column and the row, the use is permitted in that district.
- D. If the letter "C" appears in the box at the intersection of the column and the row, the use is conditionally permitted subject to the conditional use permit review procedures and criteria specified in BLMC 18.52.020.
- E. If the letter "A" appears in the box at the intersection of the column and the row, the use is permitted as an accessory to the primary use.
- F. If a footnote appears in the box at the intersection of the column and the row, the use may be permitted subject to the appropriate review process indicated above and the specific conditions indicated by the corresponding footnote.
- G. All applicable requirements shall govern a use whether or not they are cross-referenced in the matrix. To determine whether a particular use is allowed in a particular zoning district and location, all relevant regulations must also be consulted in addition to this matrix. (Ord. 1416 § 10, 2011).

18.08.020 Land use matrix.

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Residential Uses											
Accessory dwelling unit			P ¹	P ¹							
Adult family home	P	P	P	P	P						
Apartments/condominiums				P		P ²	P ²		P ³	P	
Boarding homes			P	P							P
Duplexes (two-family residences)			P	P							
Family day cares	A	A	A	A	A				A	A	
Group homes				C							C
Home occupations; provided the criteria in BLMC <u>18.22.010</u> are met	A	A	A	A	A				A	A	

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Mobile/manufactured homes subject to Chapter 15.08 BLMC	P	P	P								
Mobile/manufactured home parks in existence as of annexation into the city							P				
Nursing homes and continuing care communities (NAICS 623110 and NAICS 623311)							P	C			C
Senior assisted living facilities (NAICS 623312)			P	P		C	P	C	P ³	P	
Private docks, mooring facilities and boathouses; provided the project complies with shoreline management regulations and the provisions of BLMC 18.22.070	A	A	A	A							P
Residences in connection with a business establishment					P	C	A	C	P ³	P	
Residential care facilities				P							
Single-family residences, detached	P	P			P						
Townhouses			P	P	C	C	P	C			
Educational Uses											
Colleges and universities or extension classrooms						P	P	P	P ³	P	P
Dancing, music, art, drama and instructional/vocational schools					P	P	P	P	P ³	P	P
Elementary school		C	P	P	P	C		C			P
Junior high, high schools and junior colleges, public or private		C	C	C	C	C		C			P
Preschool		C	P	P	P	P		P			
Cultural, Religious, Recreational, and Entertainment Uses											
Adult entertainment facilities subject to the provisions of Chapter 18.32 BLMC							P				
Amphitheater						P	P	P			
Campgrounds							P	C			C
Essential public facilities							P				C
Galleries					P	P		P	P	P	
Golf courses	C										C

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Golf driving range							P				C
Government buildings and facilities		C	C	C	P	P	P	P	P	P	P
Gymnasiums and fitness centers, public or commercial						P	P	P			P
Libraries				P	P	P	P	P	P	P	P
Museums	C	C			P	P	P	P	P	P	P
Parks, open space and trails	P	P	P	P	P	P	P	P	P	P	P
Pocket park	P	P	P	P	P	P	P	P	P	P	P
Private meeting halls	A	A	C	P	P	P	P	P			P
Public meeting halls			C	P	P	P	P	P			P
Recreation facilities, outdoor	C						P				P
Recreational vehicle parks							P				
Religious institutions	P ⁴	P ⁴	P ⁴	P ⁴	P	P		P	P ³	P	C
Swimming pools, public or private	A	A	A	A	A	P	P	P			P
Theaters						P	P	P	P	P	
Industrial Uses											
Assembly or processing of previously prepared materials in a fully enclosed building							C ¹				
Junk, salvage or wrecking yard; provided a solid fence and/or solid screening hedge at least eight feet high is built and maintained to screen from view the open storage use							C				
On-site treatment and storage facility as an accessory use to a permitted use which generates a hazardous waste subject to compliance with the state siting criteria adopted pursuant to the requirements of Chapter 70.105 RCW and issuance of state hazardous waste management facility permit						A	A				

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Storage or distribution of sand, gravel, top soil, or bark; provided a solid fence and/or solid screening hedge at least eight feet high is built and maintained to screen from view the storage area							P				
Storage or processing of any hazardous waste as defined in Chapter 70.105 RCW is not permitted as a principal use							C				
Trailer-mix concrete plant; provided a solid fence and/or solid screening hedge at least eight feet high is built and maintained to screen from view the concrete plant and storage yard							C				
Retail and wholesale warehousing and distribution of goods within a fully enclosed building						P	P	P			
Resource Management Uses											
Agriculture and orchards	P										
Forestry and tree farms	P										
Raising of livestock, small animals and fowl; provided the requirements of BLMC 18.22.060 are met	P										
Transportation, Communication, Utilities											
Parking garages						C	P	C	C		
Public utility facility; provided the requirements of BLMC 18.22.050 are met	P		P	P	P	P	P	P			
Commercial Uses											
Ambulance service						C	P	C			
Antique shops					C	P	P	P	P	P	
Arcade							P	P			
Automatic teller machines (ATMs)						P	P	P		P	
Automatic teller machines (ATMs) with no drive-through					P	P	P	P	P	P	

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Automobile fuel and recharging stations and car washes						P	P	P			
Automobile, boat and trailer sales							P	C			
Automobile, boat and trailer repair						P	P	P			
Bakery, retail					P	P	P	P	P	P	
Bakery, wholesale							P				
Banks, savings and loan associations						P	P	P			
Banks, savings and loan associations with no drive-through					P	P	P	P	P	P	
Barber shops and beauty shops					P	P	P	P	P	P	
Bars					C	P	P	P	P	P	
Bed and breakfast houses; provided the criteria in BLMC 18.22.030 are met	A	C	C	C	P						
Beer and wine specialty shops					P	P	P	P	P	P	
Bookstores				A	P	P	P	P	P	P	
Bowling alley											
Brewpubs and microbreweries					C	P	P	P	P	P	
Cabinet and carpenter shop						C	P	C			
Candy shop					P	P	P	P			
Cart vendors					P	P	P	P			
Cinema						P	P	P			
Coffee shops, cafes, no drive-through					P	P	P	P	P	P	A
Coffee stand, drive-through						P	P	P			

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Commercial, professional and service uses associated with a residential complex, including banks, savings and loan associations, barber and beauty shops, business and professional offices, medical and dental clinics and neighborhood grocery, coffee shops, or restaurants, provided such uses occupy no more than 10 percent of the land area of the parcel or parcels within the residential complex and no individual commercial, professional or service use exceeds 5,000 square feet of floor area				A			P				
Commercial uses associated with a permitted use, such as a snack bar or gift shop, provided the commercial activity is open for business no more than 150 days per year or is within the same building as the permitted use							P				A
Contractor yards, provided a solid fence and/or solid screening hedge at least eight feet high is built and maintained to screen from view the open storage use							P				
Day care centers				C	P	P	P	P			P
Department store						P	P	P			
Dry cleaning						P	P	P	P	P	
Food markets, delicatessen and meat markets (beer and wine may be sold)					P	P	P	P	P	P	
Furniture and small household appliance repair shops					C	P	P	C			
Furniture building, repair and upholstery							P				
Hardware stores						P	P	P	P	P	
Horticultural nursery and garden supply, indoor or outdoor						P	P	P	P	P	

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Hospitals		C	C	C		P	P	P			C
Hotels, motels						C	P	C	P	P	
Kennels	C		C	C	A	A	P	A			
Laundromats					P	P	P	P			
Liquor stores					C	P	P	P			
Locksmiths and security alarm shops					P	P	P	P			
Machine shops						C	P	C			
Massage therapy/spas					P	P	P	P	P	P	
Medical-dental clinics						P	P	P	P ³	P	
Medical offices					P	P	P	P	P ³	P	
Mini day care center				C	P	A	P	A	P	P	
Mini-storage facilities						C	C	C			
Nail salons					P	P	P	P	P	P	
Nightclub							P				
Open storage yards, including storage and sale of building materials and heavy equipment, provided a solid fence and/or solid screening hedge at least eight feet high is built and maintained to screen from view the open storage use							P				
Outdoor storage and sale of building materials and nursery stock, provided such use is accessory to a permitted use and enclosed within a sight-obscuring fence						A	A	A			
Pet shop, grooming and supplies					P	P	P	P	P	P	
Pharmacies						P	P	P	P	P	
Photographic processing and supply						P	P	P	P	P	
Photography studios					P	P	P	P	P	P	
Plumbing shops, electricians, heating, air conditioning sales or repair						C	P	C			
Pool hall						P	P	P			

Zone Use	RC-5	R-1	R-2	R-3	C-1	C-2	E	MC	DC	DM	PF
Printing, copying and mailing services					P	P	P	P	P	P	
Professional offices					P	P	P	P	P ³	P	
Restaurants, including drive-in restaurants					C	P	P	P			
Restaurants, no drive-through					C	P	P	P	P	P	
Retail shops					C	P	P	P	P	P	
Roadside produce stands	P				P	P	P	P			P
Shoe repair					P	P	P	P	P	P	
Shopping center						P	P	P			
Skating rink						P	P	P			
Stables and riding schools	P										P
Tailor shops					P	P	P	P	P	P	
Tanning salon					P	P	P	P	P	P	
Tavern					C	P	P	P	P	P	
Veterinary clinics, animal hospitals						P	P	P			
Veterinary clinics with no outdoor kennel space or dog runs						P	P	P	P ³	P	
Wireless communications facilities are permitted as principal or accessory uses provided the requirements of Chapter <u>18.50</u> BLMC are met	P		P	P	A	A	P	A			

P = Permitted

C = Conditional use

A = Accessory use

P¹ = No accessory dwelling units are allowed in conjunction with a duplex

P² = Subject to the commercial design standards of Chapter 18.31 BLMC

P³ = Allowed outright on second floor, requires a CUP if on the first floor

P⁴ = Subject to the provisions of BLMC 18.22.040

C¹ = Exclusions are listed in BLMC 18.29.040

(Ord. 1483 § 1, 2014; Ord. 1416 § 10, 2011).

18.08.030 Cannabis collective gardens and dispensaries.

Notwithstanding any other provision of the Bonney Lake Municipal Code, cannabis collective gardens and cannabis dispensaries are prohibited in all zoning districts. (Ord. 1442 § 3, 2012).

The Bonney Lake Municipal Code is current through Ordinance 1484, passed July 8, 2014.

Disclaimer: The City Clerk's Office has the official version of the Bonney Lake Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent the Brief of Respondent with Appendices to the following:

Sent via Messenger to:
David C. Ponzoha, Court Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, Washington 98402

Sent via Email/U.S. Mail/
Messenger to:
Robert Kanany
7410 182nd Avenue East
Bonney Lake, Washington 98391
Email: buddy8723@hotmail.com

DATED this 4th day of September, 2014.

Brittany Tornquist
By: Brittany Tornquist, Legal Assistant
Porter Foster Rorick LLP

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