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April 8, 2013

Whatcom County Planning Commission
5280 Northwest Dr.
Bellingham, WA 98226

Re: *Fort Bellingham/Marietta Rural Neighborhood
Smith Gardens Property
Proposed Findings of Fact and Conclusions*

Dear Planning Commission:

This letter is a follow-up to our letter dated March 28, 2013 regarding the same.

In support of retaining the Smith Gardens property within the Rural Neighborhood, we prepared changes to County Staff's "Proposed Findings of Fact and Reasons for Action." Our changes are contained in the attached Exhibit A.¹

As a result of these proposed changes to County Staff's "Proposed Findings of Fact and Reasons for Action," County Staff's "Proposed Conclusions" must be changed. Our changes are contained in the attached Exhibit B.²

Again, we respectfully request that the Planning Commission ignore the staff's recommendation and retain the Smith Gardens property within the Fort Bellingham/Marietta Rural Neighborhood.

Thank you for your consideration.

Very truly yours,

BELCHER SWANSON LAW FIRM, PLLC



JACK O. SWANSON
Attorney at Law

Cc: client

¹ Note that all additions are underlined and all deletions are struck-through.

² See Note 1.

Exhibit A

Add the following Findings of Fact and Reasons for Action:

With regard to the Fort Bellingham/Marietta former LAMIRD, the Board originally held in its FDO of January 4, 2012 that the LAMIRD was too close to an Urban Growth Area. Therefore, the Board held that the entire LAMIRD was "clearly erroneous." In response, based upon a 2011 survey showing predominantly small lots, we created the Rural Neighborhood designation allowing R2A zoning in that area. We believe this new designation clearly reflects the rural character of the area.

In response, in its FDO dated January 9, 2013, the Board stated that inclusion of large undivided parcels within the Rural Neighborhood was in violation of the Growth Management Act – specifically the "internal consistency" contained within the preamble of RCW 36.70A.070. The owner of Smith Gardens (a 24 acre parcel situated at the southeast end of the Fort Bellingham/Marietta Rural Neighborhood) appealed both of the Board decisions which are pending. We support those appeals.

The Rural Neighborhood was created and is used in the Fort Bellingham area because of its somewhat unique situation. The Rural Neighborhoods and particularly Fort Bellingham have been recognized as areas established with predominantly residential uses, with higher densities, than surrounding rural areas. The neighborhood was zoned RR1 for decades and much of the development in that area developed at that density (1 unit per acre). Because of this previous development, it is unlikely that there will ever be pressure to bring the full array of urban services into the Fort Bellingham Rural Neighborhood.

The Lummi Nation reservation already has a sewer line that serves homes there. The owners of that property have no incentive to participate financially in extending the sewer out to that area. The existing septic systems work just fine for most residents. The topography also suggests a lack of interest in extending sewer and Bellingham city limits out that far. The Nooksack River provides a boundary for containing the rural neighborhood.

There has been little support from residents just outside the city limits to become part of the city. The landowners at the city limit are typically industrial users who already have city services and do not desire to be subjected to city regulation. The distance from the end of the sewer to the Fort Bellingham rural neighborhood is over one mile and there is no one available to pay the cost of extending the sewer out.

Because of the foregoing, many of us have concluded that the Bellingham city limit will remain where it is now and there is no need to extend the urban growth area further to the west for many decades. This information is contained in the record and was referenced by the Board in the January 9, 2012 FDO when it explicitly stated "during the recent review of Whatcom County's UGA's the area was not proposed for inclusion in the Bellingham UGA."

The Smith Gardens property and the Satushek property to the east are scheduled for subdivision and short subdivision development within the next couple of years. This means that the remaining acreage on the Smith Gardens site is the only land that has potential for division into smaller lots.

Rural Neighborhood zoning would allow two acre lots which could result in an overall density of 12 residential units if the Smith Gardens property is left inside the Rural Neighborhood. These units would be completely consistent with the existing development in the area and in most cases, much less dense. Most of the developed lots in the Fort Bellingham area are 1 acre or smaller.

As the regulatory burden continues to grow, the likelihood that Smith Gardens will be able to continue to operate on this site gets smaller and smaller. While the site remains profitable for now, that may not be the case in 10 years. Plans need to be made today for the conversion of the Smith property into other uses. The most likely choice is residential uses that are clearly compatible with the existing development there now. The problem with that analysis is that 4 building sites, each on a 5-acre tract, are unlikely to justify the demolition of the buildings in the conversion of the 24 acres into such a project. Rather, with no incentive to remove the buildings and convert the site, there is a significant likelihood that the site could become another cement plant. That is, a place where 100-year old buildings simply stand and rot, for the most part, because the cost of removal and conversion cannot be justified by the uses that would be available at R5A zoning.

For the reasons stated above, and based on the new evidence and on the belief that the Board previously erred, we respectfully decline to remove the Smith Gardens from the Fort Bellingham/Marietta Rural Neighborhood.

Exhibit B

Delete Proposed Conclusion I. c.:

Rural Neighborhoods: Amended boundaries of the ~~Fort-Bellingham/Marietta~~, North Bellingham, and Welcome Rural Neighborhoods, along with the amendments to the zoning maps, exclude several larger parcels in order to be more consistent with the small-lot development pattern.

Revise the second and third paragraphs of Proposed Conclusion J. a. ii.:

County-wide Planning Policy B.2 states, "The county shall discourage urban level development outside Urban Growth Areas and outside of areas currently characterized by a development threshold greater than a rural development density." The proposed amendments retain requirements that higher rural densities be contained in designated LAMIRDs and Rural Neighborhoods, per WCCP Policy 2GG-2, and remove land from the Smith & Guide Meridian and Birch Bay-Lynden & Valley View Rural Community (Type I LAMIRD), and the ~~Fort-Bellingham/Marietta~~, North Bellingham, and Welcome Rural Neighborhoods.