
MEMORANDUM

TO: Whatcom County Council
FROM: Robert A. Carmichael and Simi Jain, Attorneys for Caitac USA Corp.
RE: Amendments to Zoning Code and Comprehensive Plan-Rural Element
DATE: May 31, 2013

This comment is submitted on behalf of Caitac U.S.A. Corp. ("Caitac") owners of the property upon which the North Bellingham Golf Course is located at Guide Meridian and the Smith Road. Caitac verbally commented during the May 21, 2013, public hearing on several proposed changes from Whatcom County Planning and Development Services staff ("Staff") and also the April 25, 2013, Whatcom County Planning Commission recommendation. During your last meeting however, you adopted changes to the Planning Commission recommendation which alters our position on various amendments.

Issue 1

a. Clarify that R10A can be considered for inclusion with UGA

As stated during the public hearing, Caitac proposes an amendment to the preamble to Goal 2GG and its policies by adoption of language which states that, "land zoned R10A is not precluded from consideration of inclusion within the UGA." (pp. 8-9 Comp Plan) The County's current Comprehensive Plan contains goals and policies which address land zoned R10A as available for inclusion within the UGA. (Policy 2R-4 and 2S-3). So the proposed amendment is consistent with this intent. Next, the Planning Commission's recommendation for changes to WCC 20.36.253 indicates where R10A zoning is allowed. We submit that it should also state that R10A zoning is allowed within the UGA. Even if it is possible that R10A land could be rezoned at the time when it is included within the UGA, such a rezone is not required. For instance, presently there is land zoned Agricultural within the UGA. Given the Planning Commission's recommendation for WCC 20.36.253, a better course would be to make clear that R10A zoning is allowed in the UGA.

b. R10A rezone criteria is more than required by Growth Management Hearings Board remand

At the public hearing, the Council passed a motion to remove the Planning Commission's recommended alternative rezone criteria for R10A rezones under Policy 2GG-3(A). Removal of Policy 2GG-3(A) seems to go too far when there is only a 6% difference between criterion Policy 2GG-3(A) and Policy 2GG-3(B).

As it now stands with the Council's recent amendment, the criteria for a rezone from R10A to a higher zoning density is based upon an arbitrary consideration of land 500 feet from the rezone area.¹ This limits R10A land from rezones based on the development of surrounding land as of January 1, 2013, regardless of whether that land has been developed to its full potential. The criteria also include an elevation of the rural land study areas to a regulatory requirement when at the time it was adopted there was no indication of it having regulatory effect. A better policy would be to keep both options for a rezone available for landowners. Therefore, we request that Council pass another motion to re-adopt the Planning Commission's recommendation for Policy 2-GG-3(A).

If the Council is willing to reconsider its decision and add Policy 2GG-3(A) back into the proposed amendments, another requisite change would be to clarify the preamble to the rezone criteria so that it states, "Rezoning from R10A to allow higher densities are limited to those R10A areas that are abutting higher density or intensity zoning or development." (pp. 8-9 Comp. Plan)

Issue 2

We agree with Staff's recommendation and the Council's change to what the Planning Commission recommended for the definition of "reserve tract" under WCC 20.97.345. Finally, we agree with the changes recommended by the Planning Commission for the changes made to the percentages required for reserve areas when the property is zoned R10A with public water and not subject to the Agricultural Protection Overlay under WCC 20.36.253.

Thank you for your time and consideration.

¹ Council Member Kershner questioned County staff person, Gary Davis, during the May 21, 2013 public hearing whether Caitac's property would meet this criterion and all criteria for a R10A rezone. Davis confirmed that Caitac's property will meet the new criteria. Staff's calculation of the average built density within 500' of Caitac's property is 7.3. This is extremely close to what is required for a rezone of R10A land. Caitac's own built residential density calculations are between 6.6 and 7.0 depending upon whether one counts mobile homes as residence.