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July 27, 2015

HAND DELIVERED

Bellingham City Council
210 Lottie Street
Bellingham, WA 98225

Re: Resolution Proposed by Planning Commission

Dear Council Members:

We are attorneys for Samish Hill Associates, owners of land located in the South Yew Street area, proposed for inclusion in the Bellingham UGA and ultimate annexation.

There is a resolution before you tonight which reads as follows:

4. Prior to consideration of an annexation proposal for the S. Caitac property and adjacent properties on Meridian Street and for the S. Yew Street area:
 - a. The 2009 Annexation Phasing Plan shall be updated by the City to add the two recommended UGA expansion areas; and
 - b. The proponents of an annexation proposal shall include a plan to assist with funding the necessary infrastructure and service improvements. The plan should specifically address existing deficiencies associated with pre-existing development. The plan should identify approaches and strategies to address the provision of key infrastructure that remedies existing deficiencies within each of the unincorporated UGAs. Funding for the provision of this infrastructure could be obtained through the formation of local improvement districts, establishment of an annexation-specific levy, grants or other similar funding methods;
 - c. An annexation proposal shall include a plan to purchase or transfer development rights from the Lake Whatcom Watershed.

Items b and c are particularly troublesome. Property owners/developers are not required to cure the ills of the world, only those impacts to infrastructure and service improvements directly caused by their development activities.

As noted in numerous United States Supreme Court cases, there must be a "nexus" and "rough proportionality" before the property or the property's owners may be compelled to pay an exaction. Exactions are sometimes cash payments. Exactions are also dedications of land in lieu

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of cash. A requirement to purchase or transfer development rights from the Lake Whatcom Watershed would also be an exaction.

Likewise, this same analysis applies to proposals to assist with funding for infrastructure and service improvements unless a specific nexus and rough proportionality can be established.

We recommend the proposed language not be adopted.

Thank you for your consideration.

Sincerely yours,

BELCHER | SWANSON LAW FIRM, PLLC

A handwritten signature in dark ink, appearing to read "Jack O. Swanson", followed by a horizontal line.

JACK O. SWANSON
Attorney at Law

Cc: Clients

JOS:tm

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