

John C. Belcher
Jack O. Swanson
Chester T. Lackey
Terrance G. Lewis
Douglas K. Robertson

Belcher | Swanson

LAW FIRM, PLLC

Jeffery J. Solomon
Bradley D. Swanson
Scot S. Swanson
Peter R. Dworkin
Mark A. Lackey

RECEIVED

SEP 17 2009

LONG RANGE
PLANNING DIVISION

September 17, 2009

Whatcom County Council
311 Grand Avenue
Bellingham, WA 98225

Whatcom County Planning Commission
311 Grand Avenue
Bellingham, WA 98225

Dear Council Members and Planning Commissioners:

This letter is written on behalf Dunham's Ridge, L.L.C., Yew Street Associates, Hillside Associates and Frank and Sandra Muljat. These companies own approximately 100 acres within the area north of Lake Padden that is recommended to be Urban Growth Area Reserve (hereinafter "Yew Street Reserve"). The above named companies and individuals object to removal of their properties from the Bellingham Urban Growth Area for the reasons stated in this letter.

RCW 36.70A.110(1) requires County to designate Urban Growth Areas ("UGAs") within which urban growth shall be encouraged and outside of which development growth can occur, only if it is rural in nature. RCW 36.70A.110(2) requires the County to include within urban grown areas sufficient area and density to accommodate projected growth for the next 20 years.

The above-described GMA requirements are mandatory. The document entitled Urban Growth Area Review dated August 17, 2009, recommends that the City of Bellingham grow to accommodate approximately 116,000 people. In order to satisfy this requirement, the County uses the development capacity of the Yew Street Reserve to satisfy the GMA requirement that there be sufficient area and density to support growth for the next 20 years. Projected growth that is not in a UGA cannot be used to satisfy the requirement that the City including its UGAs accommodate 20 years of population growth.

The County does not have any discretion as to whether or not to create adequate UGAs. The statute is mandatory. Based on the County's allocation, failure to designate the Yew Street Reserve as a UGA violates the requirements of RCW 36.70A.110.

The Urban Growth Reserve Areas as described in the preliminary draft comprehensive plan appears to be designed to control the behavior of the City of Bellingham.

Whatcom County Council
Whatcom County Planning Commission
September 17, 2009
Page 2 of 3

Once an area is designated a UGA, its development will ultimately be controlled by the City since it controls the services and annexation. Annexation statutes control the method, rights, responsibilities and remedies of the various parties relating to the annexation. If the County objects to a particular annexation, it has recourse to the Boundary Review Board.

The Urban Growth Area Reserve structure appears to be an attempt to prevent the City from annexing property without first reaching an agreement with the County on all land use and development regulations for each Urban Growth Area Reserve. This structure usurps the City's right to control land use within its boundaries. The GMA does not give the County authority to control land use decisions of the City by creation of a qualified UGA. The County's remedy, if the City's actions do not comply with the GMA, is through the Growth Management Appeals Board.

The power given to the County under the GMA, as it relates to the establishment of the UGAs, is limited and simple. The County must establish UGAs that are sufficient in size and allow sufficient population density to accommodate projected growth for the City for the next 20 years. A qualified UGA is not as a UGA as contemplated by the GMA and does not satisfy this requirement.

The specific reference in the Urban Growth Area Review document refers to two special conditions relating to the Yew Street Reserve: (1) It states that Lake Padden is an impaired water body. All UGAs have some environmental issues that must be resolved at the time of development by application of the approved stormwater rules implementation of the Critical Areas Ordinance and compliance with the State Environmental Policy Act. Any development that occurs within the Lake Padden watershed will only occur if it complies with all best management practices and best available science. This is true whether or not the property is in the City or the County¹. If the Yew Street Reserve is otherwise appropriate for inclusion in the UGA, this is not a factor that is not appropriate for its exclusion. (2) The other specific condition relating to the Yew Street Reserve relates to the availability of the public services. This area is no different than most of the other UGAs. Public services are provided as development occurs by developers who are required to extend water, sewer, roads, and pay impact fees. Other services such as police and fire need to be resolved prior to annexation. The decision as to whether or not those adequate public facilities exist is the City's decision and not the County's decision. Any differences between the City and County would be resolved through the annexation process.

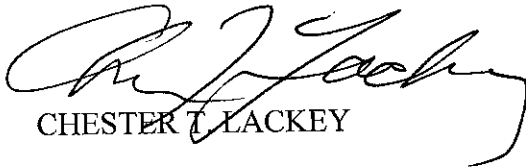
¹ It should be noted that Lake Padden is impaired because of PCB's. Development of the Yew Street Reserve will have no effect on this condition.

Whatcom County Council
Whatcom County Planning Commission
September 17, 2009
Page 3 of 3

CONCLUSION

If future growth contemplated for the Yew Street Reserve is needed to satisfy the City and County's GMA requirements, then the Yew Street Reserve must be included within the UGA. A qualified UGA is not permitted by the GMA and a scheme that counts potential density outside of UGAs to accommodate future growth is defective.

Very truly yours,



CHESTER T. LACKEY

CTL:ej