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October 1, 2009

Whatcom County Council
311 Grand Avenue
Bellingham, WA 98225

Whatcom County Planning Commission
Northwest Annex
5280 Northwest Drive
Bellingham, WA 98225

Whatcom County Planning and Development Services
Northwest Annex
5280 Northwest Drive
Bellingham, WA 98225

**Re: 5660 Guide Meridian
Rural Element Update of Whatcom County Comprehensive Plan**

Dear Whatcom County Planning Commissioners and Planning Staff:

We are writing on behalf of our clients, Melvin and Betty Balfour, who will be dramatically affected by the outcome of Whatcom County's update of the Rural Element of its Comprehensive Plan and who just learned of the drastic downzone proposal. The Balfours' property, at the corner of the Guide Meridian and Axton Road is appropriate for inclusion within the Axton/Guide Meridian Limited Area of More Intensive Rural Development (LAMIRD).

The Balfours' property is located at 5986 Meridian Street (Parcel No. 390330 060501 0000) on the corner of Meridian and Axton, as shown on the attached map. The property has been in the Balfour family since the 1890's and was the site of one of the first commercial businesses on the Guide Meridian. Melvin Balfour's grandparents began operating a blacksmith business there in the late 1800's shoeing horses and repairing wagons.

Currently, there is a house and a garage situated on the property. The house was a part of the original commercial blacksmith operation, and both the house and the garage have housed commercial activity throughout the 1900's until just recently (August 2009), when a renter operated a lawnmower and repair shop out of the garage. Other small businesses that have operated on the property throughout the years include an arts and crafts business as well as a business for building small, outdoor sheds.

The County should not have license to downzone this property or exclude it from a LAMIRD, simply because the commercial activity was operating out of the house and garage rather than out of a more "commercial looking" business establishment. The fact that it has been operating as a commercial property as long or longer than any other business on the Guide Meridian should suffice as reason enough to include it in an area of more intensive rural development, since ongoing commercial activity is a more intense use than what would normally

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be considered "rural." To render this property "residential" as R10A would be to make it nonconforming and prevent it from functioning as it has commercially functioned for over 100 years.

The lawnmower repair shop relocated to another site in August of 2009 and since that time, the house and garage have remained empty. Because of the traffic, noise, and pollution that results from the busy intersection, the house is proving impossible to rent as a residential unit. The Balfours have had several inquiries about leasing the entire property as a commercial enterprise.

It is not an exaggeration to say that the Balfours' property is completely surrounded by development. Two sides of it front on a major intersection. There is commercial development directly across the street. The three other corners of Axton and Meridian are commercially developed and serve heavy traffic. The intersection is undoubtedly one of the busiest in Whatcom County, with Axton leading directly into Ferndale and Meridian leading directly into Lynden. The volume of traffic passing through there every day is extremely high, and commercial trucking is a large part of that volume.

The Balfours' property has been zoned General Commercial for many years. The family has paid property taxes for a commercially zoned property since that time and has operated it commercially. Recognizing that the property would eventually be more intensively commercially developed, they applied for and received a permit to construct a commercial driveway to access the property.

A recent state appraisal of the property was performed in November 2007 when the Guide Meridian was widened. The property was appraised as a commercial property, and the state acknowledged that the property's "highest and best use" was for commercial development.

The Balfours had been waiting for the state Department of Transportation to finalize the widening of the Guide Meridian before redeveloping their property commercially. They have begun the preliminary stage of developing it by, as mentioned, constructing a commercial driveway, which is accessed via Axton Road, and also purchasing additional water shares from the Deer Creek Water Association. They recognized that only one water share would not be sufficient to serve a large commercial enterprise on the property, and so that purchase was made with the intention that the property be developed at its highest and best use. The driveway improvement and the additional water shares have cost the Balfours nearly \$30,000. They also pay fees every month to maintain the water shares.

This property at the corner of Axton and Guide Meridian is inappropriate for any other type of development except for commercial development. The land cannot be farmed. It is completely inappropriate for residential development, because of the high volume of traffic that passes through the area. That fact is supported by the Balfours' inability to rent the house as a residential unit, and it's been impossible to rent the garage and house jointly as a cottage industry, because no one wants to actually live on the property. Since the Guide Meridian was widened, the house is so close to the road, that it is unsafe for a family with children. The noise from huge semi and gravel trucks actually rattles the windows. The area is simply inappropriate for any other use than commercial. Furthermore, every other corner of this heavily trafficked intersection is developed, is functioning commercially, and is recommended for inclusion in the LAMIRD.

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To take away this property's commercial zoning would be to remove any viable use of the property and would entirely remove its economic value. For that reason, the Balfours are uniquely situated to initiate a takings challenge against the County if their property is downzoned.

It's also important to note that RCW 36.70A.070(5)(d)(iv) does allow for the inclusion of properties that were not "developed" prior to 1990. While it may be arguable that the Balfours' property was not "developed" with a commercial building prior to 1990, there were functioning commercial businesses on the property from the late 1800's until August of 2009. There is not a more appropriate parcel of land than this, situated on one of the busiest intersections in Whatcom County, on three corners of which are sited commercial development, than the Balfours' property. The inclusion of the property within the LAMIRD would be a natural extension of the surrounding neighborhood and would effectuate a more consistent outer boundary. The property is served by existing infrastructure, with a water line fronting on the property, and the Balfours hold four water shares to adequately serve commercial development on the property.

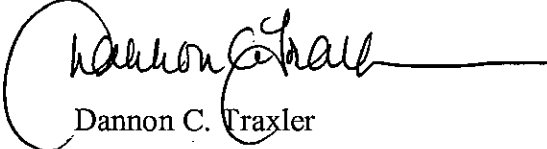
The Planning Department and Planning Commission have recommended the inclusion of vacant lots in other LAMIRDS, including in areas outside of the Guide Meridian. Given the fact that the Balfour property has functioned commercially since the late 1800's, is served by existing infrastructure which constitutes "built environment," and is situated at a heavily trafficked, commercially developed intersection, to exclude it from a LAMIRD, while including other "less developed" areas, is arbitrary and capricious. In this decision to downzone large portions of the rural County, parcels must be given equal consideration and treated consistently. Excluding the Balfours' property does not serve any purpose. Excluding it would be to treat it differently and with less consideration than other properties. Such a decision is not consistent with the GMA and constitutional legal requirements. Additionally, a downzone in this particular instance is a perfect example of what would constitute a governmental taking and would leave the County open for challenge on that basis.

To that end, we request that the Planning Department, the Planning Commission, and/or the County Council revisit the Axton/Guide Meridian map and vote to include the Balfours' property in the Axton/Guide Meridian LAMIRD and allow the property to maintain its General Commercial zoning.

If you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

LANGABEER & TULL, P.S.



Dannon C. Traxler

DCT: ao
enclosures
cc: clients