

# E. Settlement Agreement



**Rob McKenna**  
**ATTORNEY GENERAL OF WASHINGTON**

Ecology Division  
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

-----SENT VIA E-MAIL AND UNITED STATES MAIL-----

February 8, 2006

Philip Buri  
Buri Funston, PLLC  
1601 F Street  
Bellingham, WA 98225

Douglas K. Robertson  
Belcher, Swanson, Lackey, Doran,  
Lewis & Robertson, PLLC  
900 Dupont Street  
Bellingham, WA 98225-3105

Alan Marriner  
Assistant City Attorney  
City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225

RE: *Susan Kaun, et al. v. Fairhaven Harbor Company LLC, et al.*  
SHB No. 05-016

Dear Counsels:

I have enclosed a copy of the settlement agreement with my signature on behalf of Ecology. My original signature sheet was sent to Alan for his files. I write to confirm our mutual understanding of paragraphs 2, 5, and 11 of the agreement based on my conversations with all of you earlier today. Our mutual understanding is that, pursuant to condition 12 of Ecology's approval and paragraph 11 of the settlement agreement, Ecology still must review and approve the right-of-way improvement plan (which would include both the pedestrian right of way and the turnaround described in paragraphs 2 and 5 of the agreement).

We now have a fully executed settlement agreement which should be sufficient for the Board to dismiss the case. I thank everyone for their promptness and cooperation in this matter and apologize for the delay on my end in getting the agreement approved and signed.

Sincerely,

/s/  
LAURA J. WATSON  
Assistant Attorney General

LJW:tmr  
Enclosure

**SETTLEMENT AGREEMENT**

3 Susan Kaun, a Washington resident, Fairhaven Neighbors, a Washington nonprofit  
4 corporation, Fairhaven Harbor Company, LLC and 8<sup>th</sup> and Harris Holding Company, LLC,  
5 Washington limited liability companies (collectively "Fairhaven Harbor"), the City of Bellingham, a  
6 municipal corporation, and the State of Washington, Department of Ecology (together referred to as  
7 the "Parties" and individually referred to as a "Party") enter into this settlement agreement.

8 WHEREAS, on May 4, 2005 the City issued Fairhaven Harbor a Shoreline Conditional Use  
9 Permit (CUP) and Substantial Development Permit for a two-building, mixed-use project (the  
10 "Project") adjacent to the Padden Creek estuary; and

11 WHEREAS, on June 16, 2005, Susan Kaun and Fairhaven Neighbors (the "Petitioners")  
12 appealed the City's issuance of the permits and the Department of Ecology's approval of the  
13 Shoreline Conditional Use Permit to the Shorelines Hearings Board (SHB No. 05-016); and

14 WHEREAS, a hearing on the merits of this appeal is scheduled for February 27 and 28, 2006  
15 before the Shorelines Hearings Board; and

16 WHEREAS, the Parties desire to settle this case prior to the hearing and without further  
17 litigation;

18 In consideration of the mutual covenants made below, the Parties agree to the following  
19 terms of settlement:

- 20 1. 8<sup>th</sup> Street between McKenzie Avenue and Harris Avenue shall be closed to  
21 vehicular traffic, except for those vehicles associated with fire, life-safety, utilities  
22 and urban services ("Vehicular Traffic"). The Bellingham City Council shall

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

rescind Resolution 2005-33 making that portion of 8<sup>th</sup> Street one-way with no parking and adopt a new resolution closing the street to Vehicular Traffic.

Fairhaven Harbor shall make the necessary changes to the Project's design and landscaping plan to reflect the closure of 8<sup>th</sup> Street to Vehicular Traffic and the removal of the parking garage entrance on 8<sup>th</sup> Street.

2. Fairhaven Harbor shall provide a ten-foot wide concrete pedestrian sidewalk in the 8<sup>th</sup> Street right-of-way in accordance with the right-of-way plan attached as Exhibit A and incorporated by reference. The design and location of the sidewalk shall be subject to City approval, which shall not be unreasonably withheld, and should be located as far east as possible in the right-of-way, except that in no case shall the sidewalk conflict with the design and construction of stoops, steps and patios associated with the Project. To the west of the sidewalk, Fairhaven Harbor shall provide an eight-foot wide permeable surface. The sidewalk and the adjacent permeable surface, having a total width of 18 feet, shall provide emergency vehicle access to the west side of the Fairhaven Harbor Project and shall be capable of supporting a 76,000-pound emergency vehicle.

3. The City shall be responsible for removing the existing 8<sup>th</sup> Street improvements. This removal shall include all pavement and all compacted ballast material. Upon 30 days notice by Fairhaven Harbor, the City shall perform said road removal. All work will be done under permits issued to Fairhaven Harbor. Fairhaven Harbor shall not be charged permit fees for the value of the aforementioned road removal.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

4. Vehicle access to the Fairhaven Harbor project's parking garage shall be from McKenzie Avenue. McKenzie Avenue shall be maintained as a two-way street to provide access and circulation to the project and the Bellingham Tennis Club.

5. Fairhaven Harbor shall provide a vehicle turnaround at the intersection of McKenzie Avenue and the 8<sup>th</sup> Street right-of-way in accordance with Exhibit A. The turnaround may encroach into the 100-foot buffer for Padden Creek and will be designed so as to minimize any expansion of the existing impervious surface of the existing 8<sup>th</sup> Street and McKenzie Avenue. However, in no case shall it encroach beyond the current street. The turnaround shall be designed to preserve access to the Tennis Club's garbage dumpsters and service bay and to discourage personal vehicular access to the pedestrian sidewalk/emergency vehicle access described in Paragraph 2 above. The design of the turnaround shall be approved by the City and such approval shall not be unreasonably withheld. Stormwater from the turnaround shall be collected and treated by the Project's stormwater system.

6. The stoops, stairs, and patios for the Project's condominiums that encroach into the 8<sup>th</sup> Street right-of-way and 100-foot buffer shall be allowed as shown on Exhibit A. These structures shall not encroach into the 8<sup>th</sup> Street right-of-way more than a total of twelve feet. The floor of the patios shall be constructed of pavers spaced two inches apart with the resulting gaps containing pervious landscape materials (e.g. grass, thyme, etc.).





**RESOLUTION NO. 2006-08**

**RESOLUTION RESCINDING RESOLUTION 2005-33 AND CLOSING 8<sup>TH</sup> STREET TO VEHICULAR TRAFFIC BETWEEN MCKENZIE AND HARRIS AVENUES.**

**WHEREAS**, on May 4, 2005, the City issued Fairhaven Harbor a Shoreline Conditional Use Permit and Substantial Development Permit for a two-building, mixed-use project adjacent to the Padden Creek estuary. The Hearing Examiner's decision on the Shoreline Conditional Use Permit required that 8<sup>th</sup> Street, the road between the project and Padden Creek, be made either one-way with no parking or closed to vehicular traffic; and

**WHEREAS**, on May 27, 2005, the State of Washington's Department of Ecology approved the City's Shoreline Conditional Use Permit for the project with conditions; and

**WHEREAS**, on June 16, 2005, Fairhaven Neighbors, a citizens group, appealed the City's issuance of the Shoreline Conditional Use Permit and Substantial Development Permit to the Shorelines Hearings Board; and

**WHEREAS**, on July 11, 2005, at the request of Fairhaven Harbor, City Council adopted Resolution 2005-33 which changed 8<sup>th</sup> Street to one-way northbound between McKenzie Avenue and Harris Avenue and prohibited on-street parking; and

**WHEREAS**, on February 8, 2006, the City, Fairhaven Harbor, Fairhaven Neighbors, and the Department of Ecology reached a settlement agreement in the appeal before the Shorelines Hearings Board which requires that 8<sup>th</sup> Street be closed to vehicular traffic; and

**WHEREAS**, Fairhaven Harbor needs the existing 8<sup>th</sup> Street to remain in place and open to traffic during construction of the project; and

**WHEREAS**, the closure of 8<sup>th</sup> Street to vehicular traffic meets the conditions of the Hearing Examiner's decision on the Shoreline Conditional Use Permit; and

**WHEREAS**, the City has the authority under RCW 35.22.280 to close its streets to vehicular traffic;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:**

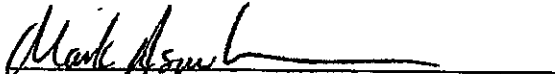
Resolution 2005-33 is hereby rescinded in its entirety effective immediately. The 8<sup>th</sup> Street right-of-way between McKenzie Avenue and Harris Avenue will be closed to normal vehicular traffic effective on the date that the City removes the 8<sup>th</sup> Street pavement in accordance with the settlement agreement referenced above. The City and Fairhaven Harbor shall coordinate and agree upon the date for removal of the 8<sup>th</sup> Street paving. The 8<sup>th</sup> Street right-of-way between McKenzie and Harris Avenue will continue to be used to provide pedestrian and emergency vehicle access.

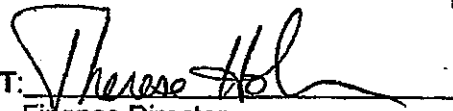
City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-676-6903


PASSED BY THE COUNCIL THIS 13<sup>th</sup> DAY OF March, 2006.

  
Council President

APPROVED by me this 20<sup>th</sup> day of March, 2006.

  
Mayor

ATTEST:   
Finance Director

APPROVED AS TO FORM:  
  
Office of the City Attorney

RESOLUTION (2)

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-676-6903