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City of Bellingham  
Planning

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2950 NewMarket Pl #101 Box 158  
Bellingham, WA 98226

September 21, 2010

Planning and Development Commission  
Planning and Community Development Department  
210 Lottie Street  
Bellingham, WA 98226

RE: Silver Beach Community Plan adoption

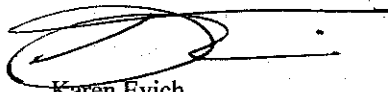
I attended the planning commission meeting on Thursday Sept. 16, 2010 regarding the adoption of the above document, thus I understand we have two weeks for public comment.

I purchased a home in the Silver Beach community, located at 2816 Pullman St., a year ago. Since then I have been attending the monthly meetings when possible and have been involved in the SBC plan comments prior to adoption. Originally, we as an association were going through chapter by chapter, commenting and voting. I discovered that making any real change to this document, which has been 3 years in the making, was futile for the simple observation that the people involved in the inception of this plan have reached the end of their tolerance for further discussion and want to move on. Thus when I showed up for the meeting on May 13th to discuss Chapter 4 it, was moved and seconded that the entire document be accepted without further discussion. There was one nay and my abstention. I felt railroaded. I did clarify with David Jefferson that the work we had done to that point would be changed in the document submitted to the city. I asked because I knew when the association first met it was adopted by vote that the word *Reservoir* was to be stricken. However, when I saw the document on Sept. 16th at the Planning Commission meeting, I was confused because the word *Reservoir* was still prevalent in Chapter 9. I have later discovered that, yes indeed; *Reservoir* was changed, but only for Chapter 1.

I apologize for the lengthy preliminary information but the purpose of this letter is to request that the word *Reservoir* be stricken from the entire document.

I am attaching facts regarding information that has been gathered about Lake Whatcom. In summary, Lake Whatcom is not a *Reservoir*. It is a large, natural lake that is navigable, under Federal law and property ownership, and as such the lake is owned by the State (DNR) in trust for the general public. Bellingham has no ownership of any sort in Lake Whatcom as a water body. Bellingham simply has State permission, under surface water permits, to regulate the lake surface elevation, and to withdraw State (public) water from the lake. To call it something it is not is not merely erroneous but misleading.

Sincerely,



Karen Evich

Attachment, 3 pages

September 20, 2010

Karen:

Yes, I'm the one to answer the question.

Ok, here we go again. Lake Whatcom is a *navigable* body of water. Always has been, always will be. The *bed* of the lake is owned by the state, in trust for the public at large, under the equal footing doctrine. Under our Federal Constitution, navigable bodies of water (useful for public transportation –i.e. – navigation) are owned by the public, and are the original public roads. After GLO (Government Land Office) surveying, Federal “uplands” were sold to the public in “fee simple”, i.e. as private property, but all the beds of navigable waters could not be sold and were held by the Federal government as “public trust” lands.

At the time of GLO surveying, which for Whatcom County was in the 1860's - 1870's, navigable waters were surveyed with surrounding “meander” lines, or boundaries, to establish the boundary between the “uplands” available for settlement and / or sale to the public as private property, and the adjoining aquatic lands (beds under water) that were not for sale but would always be public trust lands. Because meander lines did not always follow every little turn of the waters edge, the rule is that the upland owner owns to the meander line, or to the normal high water line, *which ever is located further waterward*. The point was that every waterfront owner who bought federal land on navigable bodies of water was / is entitled to access that body of public water for navigation purposes.

Not every lake or river is “navigable”. If the GLO surveyors did not consider the small lake / river useful for public navigation, they would not draw meander lines and the bed of the small body of water was sold as part of the surrounding uplands. The buyer paid for the acreage under the water as if it was dry, but also received “fee simple” title to all the land. In comparison, meander lines were used to figure the upland acreage of adjoining parcels, and you only paid for acreage to the meander line (Federal land was sold by the acre, in ¼ Section or larger parcels, and not based on “value”).

Of course, Lake Whatcom was meandered, and is a navigable body of water.

At the time of Statehood, in 1889, all public aquatic lands were transferred to the State, in fee, to be held *in trust* for the public at large. Not for Bellingham, not for the County, but for the public at large – all citizens of the United States. Forever. In other words, the beds of all navigable bodies of water – salt and fresh – are owned by the State for the public.

The State of Washington, thru its Department of Natural Resources, owns "Lake Whatcom" in fee, in trust for the public. You can find Lake Whatcom on the DNR website as one of its (i.e. public) properties. The determination as to whether a water body is "navigable" can be made by looking at the original GLO surveys (all online), which should match the DNR records. Neither the Corps, EPA, Coast Guard, NMF, DOE, nor Fisheries have anything to do with this.

Now, the reservoir stuff. Since the turn of the century, the outfall of Lake Whatcom has had some sort of a control structure on it to regulate lake elevation and outfalls. First just a wood dam, and then a larger or taller dam, and then the current steel control structure located on Whatcom Creek in Whatcom Falls Park. Because Whatcom Creek was not considered navigable (the Falls are really hard on propellers, as well as on native canoes), the control structures did not block navigation. When you control the elevation of a body of water by blocking the outfall and controlling the outflows, for whatever reasons, you create by definition a "reservoir pool". It's simply a technical term, a definition – the regulated lake body is called a reservoir pool, even though the lake is otherwise completely natural.

As surface waters of the State, the "water" in the lake is under the authority of the Department of Water Resources, which morphed into the Department of Ecology in 1971. The DOE has authority over the *water*, the physical water and its uses, but not over the *lake*. Because damming a lake and storing water is a use or withdrawal of *surface waters of the State*, you need a surface water permit to operate the dam or outfall structure, from DOE. If the dam raises the natural elevation at all (and isn't that the point), you need a *reservoir permit* with your dam permit. The reservoir permit allows and sets the parameters for the operation of the control structure, including the obligation to maintain the *lake* elevation so as to not interfere with the public's priority right to use the lake for navigation.

In summary .....**Lake Whatcom** is not a *Reservoir*. Lake Whatcom is a large, natural lake. Lake Whatcom is a navigable lake, under Federal law and property ownership, and as such the lake is owned by the State (DNR) *in trust* for the general public.

Lake Whatcom has a controlled outfall, regulated by a State (DOE) surface water permit, called a reservoir permit as it allows for control within a small range of the lake's surface elevation. As an artificially *controlled* body of water, the pool of water held behind the dam or control structure is called a reservoir pool. A reservoir pool can be in a man-made basin, in a natural non-navigable basin (lake), in a stretch of natural, navigable or non-navigable, river, or in a natural, navigable basin (lake).

It is proper to use the designation "Lake Whatcom reservoir" (or, more accurately, reservoir pool) when referring to the surface elevation of the lake, or some other reservoir permit condition or issue.

It is *not correct* to call Lake Whatcom "Bellingham's City Reservoir", or "Lake Whatcom Reservoir", or any designation where the term "reservoir" is capitalized. Bellingham has *no ownership of any sort* in Lake Whatcom as a water body. Bellingham simply has State permission, under surface water permits, to regulate the lake surface elevation, and to withdraw State (public) water from the lake.

**The water does not belong to Bellingham until it is withdrawn from the lake.**

For Lake Whatcom to be "Bellingham's Water Reservoir", or Bellingham's "Lake Whatcom Reservoir", Bellingham would need to own the water body and own the water – which it can not, for Lake Whatcom is a large, natural, navigable lake.

The source of Bellingham's water is, simply, **Lake Whatcom**. Not the "Lake Whatcom Reservoir". Bellingham does not "store" its water in Lake Whatcom; Bellingham does not own even one drop of water located in Lake Whatcom. Bellingham has a permit to withdraw water from Lake Whatcom; only after the water enters the pipeline does Bellingham "own" the actual water.

The Corps has absolutely nothing to do with any of this – don't be misled by the Corps authority over interstate or other commercial navigation asserted under the commerce clause. Ownership of Lake Whatcom by the State (DNR) *in trust* for the general public as a navigable body of water (public highway) is Constitutional, and a property rights issue, and not related to who asserts permitting jurisdiction over structures and obstructions. The Corps *could* assert Federal jurisdiction over Lake Whatcom, as it does over Lake Chelan (also land – locked), but let's not encourage more problems.

No one calls Lake Chelan "the Lake Chelan Reservoir". No one calls Lake Washington "the Lake Washington Reservoir". No one calls Lake Tahoe "the Lake Tahoe Reservoir". They all have regulating outfall structures. To call Lake Whatcom "the Lake Whatcom Reservoir" is just foolish.

Craig Magnusson



Planning and Development Commission  
210 Lottie Street  
Bellingham, WA 98226  
Saturday, September 25, 2010

Dear Planning Commissioners,

The Silver Beach Neighborhood Association and the Board have been working diligently to get our neighborhood's plan re-written, reviewed and approved. It has been a long process, but we see the end is near. This letter concerns some final edits that our Board would like you to consider. We would have gotten these to you at the public meeting on September 16, but we only received the planning department draft 3 days before and we did not have to time to meet as a board to discuss it, and no time at all to share it with the association members. In this past year, we wrote a formal letter to the Mayor and copied the planning department stating, "we needed more lead time to review important documents." We understand we are in a budget crisis and staff time is critical, but if the city wants meaningful public involvement more lead time is needed.

Every section of this document has been intimately reviewed by the Board, an SBNA subcommittee and the association members who were involved. In this recent document, the planning department made many minor edits, corrected some out dated information, inserted an important section related to regulation changes, but they also took out a few items we thought had merit. To this end, we reworded a few paragraphs and are submitting them for consideration. We have noted them below in standard editing format. In addition, we have added comments in parentheses. These comments are not to be included in the final document, but are herein included for clarification purposes.

***SBNA Board Final Suggestions for the SBNA Plan***

**Page 20, Line 2:**

In 2008, the City reconstructed Northshore Drive from Alabama to just south of Academy to include new and innovative stormwater facilities to protect Lake Whatcom, continuous pervious concrete sidewalk on the north side of the road and pervious concrete bike lanes on both sides of the street. ~~The City of Bellingham Public Works~~

Engineering Division was awarded the "2008 Project of the Year" by the Washington Chapter of the American Public Works Association (APWA). (While we commend the City on it's work and award, this document is a plan for the future.) The remainder of Northshore to the east lacks bike paths and sidewalks leaving vehicles, bikes and pedestrians competing for the same space. 2009 traffic volume between Alabama Street and Britton Road was 7,800 vehicles over a 24-hour period and truck traffic from Britton to Northshore has been limited to local traffic. 2009 traffic volume on the eastern portion of Northshore Drive between Britton Road and Silver Beach Avenue was 4,400 vehicles over a 24-hour period.

**Page 20, Line 12**

**Barkley Boulevard** is a main link for our the neighborhood to Barkley Village, I-5 and the northern neighborhoods of Bellingham. In addition to high vehicle use, walkers and bikers heavily use Barkley. Barkley Boulevard includes sidewalks and bike lanes on both sides between Britton Road and Westridge Place. ~~The City constructed a flashing crosswalk at the intersection of Barkley Boulevard and Chandler Parkway where a significant trail connection links the Alabama Hill Neighborhood to the Barkley Neighborhood. (Not in Silver Beach Neighborhood).~~ 2009 traffic counts were not available between Westridge Place and Britton Road, but 2007 counts reveal 5,000 vehicles per day at this location. 2009 counts further west on Barkley show an increase over 2007 counts so it is likely that traffic volumes here are correspondingly higher than 2007 counts indicate.

**Page 21, Line 48**

**Crosswalks:** Crosswalks are few and far between within the neighborhood. Marked pedestrian crosswalks currently exist at all intersections where they are warranted according to traffic conditions and pedestrian demand, including Alabama / Northshore, Northshore/Dakin, the Northshore retail center, Northshore/Academy, Northshore/Britton, and Britton/Barkley Blvd.

**Page 22, Line 2**

**WTA:** Due to recent budget cutbacks Whatcom Transit Authority (WTA) provides very limited bus service in the neighborhood. ~~with routes that connect the neighborhood with downtown and the rest of the WTA system.~~

**Page 22, Line 38**

Public transportation exists in the neighborhood, but its limited nature does not encourage ridership. ~~The current routes allow for direct and easy access to the Barkley~~

~~Village area, the neighborhood's primary commercial district, but r~~ Residents have expressed a desire for more frequent and accessible service.

**Page 31, Line18**

**USA - 5:** The City, in conjunction with utility providers and citizens, should develop a transparent, concise communication process should be created that all utility providers could use to ensure neighborhood awareness of scheduled projects and maintenance.

**Page 31 Line 21**

**USA - 6:** The city should explore encourage programs and incentives that encourage neighborhood residents to help control phosphorus load in the watershed remove phosphorus causing products like lawn waste and leaves.

**Page 39 Line 7**

**PROSA – 11:** The neighborhood should work with the City and public to review the policy of allowing overflow parking on the multi-use field in an effort to reduce soil compaction and land erosion that may cause additional phosphorous loading in the lake.

Thank you for your dedication to this process and your attention to detail.

Sincerely,

The Silver Beach Neighborhood Association Board



Deborah Benz  
<deborah.m.benz@gmail.com>

09/28/2010 01:47 PM

To planningcommission@cob.org

cc

bcc

Subject 2010 Silver Beach Neighborhood Plan

Dear Planning Commissioners,

I was present at the 9/16/10 meeting and appreciate your willingness to receive comments prior to forwarding your recommendations to the Bellingham City Planners.

I will preface my comments by stating the following:

1) I've lived in the Silver Beach Neighborhood for over 20 years at 3667 Britton Road. When I moved here there was no Barkley Blvd. That area at the time was forested, beautiful, with 2 small ponds and a trail running through it. Obviously, over the subsequent years, the trees were planed down and many homes were built according to the City Planning Board's "plan." With all of the new building around Lake Whatcom, the quality of the water has deteriorated and measures must be put in place to protect the water supply for the City of Bellingham and well as many Whatcom County residents.

2) The Silver Beach Neighborhood Association has made a monumental effort in expressing how they feel this portion of the City of Bellingham might best improve the above situation, addressing storm water runoff amongst other things. Due to no fault of their own, those who have tirelessly researched the problem, written their thoughts down and presented them to you represent only a handful of the 1500 residents of this area. They tried many different avenues to engage more of the Silver Beach Neighborhood residents, but the message that what was developed/suggested by these few dedicated individuals would eventually go into law was entirely missed by most of us living here. The resulting Silver Beach Ordinance (SBO) passed last year is a testament to this and has personally impacted me greatly in an unforeseen negative way. Although the SBO is now law and is not a part of the 2010 Silver Beach Neighborhood Plan, I feel it important not to let slip by future rules/laws that may further impact my property in a negative way while still supporting improving the quality of the Lake Whatcom water which we all depend on.

3) Background of my personal situation - I own 0.9 acres, >35% is wooded as is my personal preference. I have a partially shared driveway with my neighbor which has recently become a issue of contention. In an effort to mitigate this problem, I checked into the cost of putting in a parallel drive on my land for approximately 175 feet so that all tensions between us would disappear and we could live in harmony once more. Per the SBO, any change to the surface area of one's property >300 square feet requires retrofitting my entire property for storm water runoff. Cost of the new driveway: \$1600. Cost of the retrofit (engineer cost + core sampling by a geo \_ \_ + digging up my property, putting in gravel and PVC piping, etc): >\$40,000! In addition to this, I must for all eternity sign over to "conservation purposes" 1/3 of my property which can never be developed in the future. Not only does this effect me now, but my property value with

these restrictions has dropped significantly. Would YOU want to buy a property that has such guaranteed future cost/hassle? No. You'd simply buy up the hill in the County or on the other side of the hill that is not in Basin 1.

**My specific comments on the 2010 Silver Beach Neighborhood Plan:**

1) Pg 17, LUA-7: Neighbor property owners should be "encouraged" to participate in storm water runoff retrofit programs. With the cost of such retrofitting, the only "encouragement" I'd have is for the City/County to pay for it. The cost of trying to do it myself is prohibitive. I did not create the problem. Over population with poor foresight into the impact on Lake Whatcom did, and this was the direct result of following the City Planning Board's recommendations for development in this area.

2) Pg 23 and other pages: Although public transportation is not currently running in the Silver Beach Neighborhood due to recent cutbacks, I believe as the economy improves, this service will eventually be reinstated. Therefore, mention of "present or future" public transportation still needs to be included in this plan.

3) Pg 28: Re: protecting and improving property values within the Neighborhood. The SBO has already put a noose around my neck. Any further restrictions/requirements that are not supported with joint funding through the City and County will simply lower my property value even more.

4) Pg 33, USA-6: This idea of controlling the phosphorus load in the watershed is certainly valid. However, the cost should be paid for by all residents using the Lake Whatcom water for their homes. This is the only "incentive" that makes ethical and financial sense. The cost of this should NOT be the responsibility of the 1500 residents living in the Silver Beach Neighborhood alone.

5) Pg 43, LWPDWO: Although, on-site storm water treatment is helpful, it would be piecemeal. A unified plan of storm water treatment developed and paid for jointly by the City and County, as recommended by the 2010 Department of Ecology Report, makes much more sense. It would be less costly and more efficient and effective in the long run.

6) Pg 44, LWPDWA-14: The concept is good. But somehow I read "encourage" as eventual "law." If the City wants to require these "improvements," the City, a/o City/County, should pay for them. The entire City and a portion of the County benefits from these "improvements." Why should 1500 residents pay for these changes?

**Summary:**

1) The improvement of the quality of Lake Whatcom's water which services the thousands of Bellingham City residents and some of the Whatcom County residents is of urgent concern and

must be addressed as soon as possible.

2) Storm water runoff has been identified as one of the major contributors to the decline in Lake Whatcom's water quality.

3) The SBNA members have expressed their ideas as to how our small neighborhood of 1500 residents might help improve upon the existing problem. They represent approximately 1% of the residents of the Silver Beach Neighborhood. Their recommendations therefore cannot be construed as the opinion of the majority of the Silver Beach Neighborhood residents.

4) The impact of the SBNA's suggestions to the Planning Commission and ultimately to the City Planning Board is not well understood by the Silver Beach Neighborhood residents. I ask that before any further laws/restrictions/requirements are instituted by the City Planning Board that effects the Silver Beach Neighborhood directly or indirectly, that each resident of the Silver Beach Neighborhood be notified of the upcoming proposed legislation well before it goes into law so that the residents are well informed as to the potential effects these laws will have regarding their property value and their financial obligations should the law be passed. Just reading the proposed recommendations is not sufficient. The City Planning Board should explain clearly how their recommendations will effect property values and expected costs to the landowners their recommendations effect.

5) A major contributor to the Lake Whatcom water quality decline is the storm water runoff from North Shore Drive (Road) and the hillside East and Northeast of this long road. Many residents who live on the Lake have a terrific problem with their properties and homes being flooded each time we experience a heavy rain. The Southern end of this road frequently has mud and debris across it during the rainy season from uncontrolled runoff. Currently the City and County have NO means in place to deal with this. I would suggest storm water "retrofitting" along the entire road, not only taking care of the runoff problem, but also addressing the oil/gasoline pollution from the traffic on this road.

6) The above suggestion would require a cooperative effort by the City and County, already suggested by the 2010 Department of Ecology Report. I understand that these 2 entities have had difficulties working effectively together as their priorities for their constituencies are different. However, there is no other alternative. The cleanup of Lake Whatcom is important to all concerned, and differences must be set aside for the "greater good."

7) An overall plan for improvement of the Lake Whatcom water quality, including an overall storm water runoff plan, rather than piecemeal property by property management of the problem would be more effective, efficient, and cost effective in the long run

8) Finally, it is my firm belief that the cause of the decline of Lake Whatcom's water quality, is population growth according to existing City and County Planning Board's guidance which led to unforeseen problems not appreciated at the time the respective "plans" were made. I'm quite certain that no one intentionally "planned" to ruin our drinking water supply. No one can predict all repercussions of any given development plan - they simply do the best they can with the

existing expert input and knowledge at hand at the time.

However, having said this, the lake Whatcom water quality is a problem that ALL people who use the water. The cost of "fixing the problem" should not unreasonably and disproportionately be placed upon a fraction of the people actually benefiting from future improvements, but on ALL people benefiting from these improvements.

Thank you for your consideration of my input.

Sincerely,

Deborah M. Benz, MD