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February 10, 2012

Mayor Kelli Linville  
City of Bellingham  
Office of the Mayor  
210 Lottie Street  
Bellingham, WA 98225

Re: Fairhaven Neighborhood Plan Update

Dear Mayor Linville:

I apologize for the delay in getting this to you. But my day job keeps interfering with more important things.

I have great concern with the current draft of the Fairhaven Neighborhood Plan. When the update process began in 2007, one of the key purposes was to create a plan that was usable and predictable for the entire anticipated life of the Plan. Also, it has to be a plan that reflects the needs of the entire community (i.e. all of Bellingham) going into the future. While some of the unnecessary complexity has been changed based upon the recommendations of a key stakeholder, much remains that will be detrimental to the community if these issues are not addressed.

## I. FAIRHAVEN NEIGHBORHOOD PLAN MUST PLAN FOR THE FUTURE

The Fairhaven Neighborhood Plan must anticipate what future development will bring and then plan for this development to occur in coordination with expansion of the existing infrastructure. For the Plan to be effective, it must anticipate what Fairhaven will be like in 15 to 20 years: How much more commercial square footage, how much more residential square footage, how much more industrial square footage, how much more traffic will be generated, how much more stormwater will be generated, etc. Without asking these questions, a neighborhood plan can only plan for today.

I have been involved in Ferndale's efforts to do this exact type of planning. Through a Planned Action Environmental Impact Statement (PA-EIS) process, the City of Ferndale has effectively asked these questions, anticipated the needs for infrastructure and evaluated the financing of the same. To do this, Ferndale reached out to the property owners and asked what they see as the potential development for each of their properties. Based upon this survey, the city then developed low-, mid- and high-range estimates for development, they conservatively picked the mid-range level of growth and then planned

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the expansion of the infrastructure accordingly. Then, based upon this planning, they evaluated the financial impact and the financial mechanisms for addressing the needs of the increased growth. That is true planning. I would ask you to have your staff contact Jori Burnett to understand exactly how well this processed work for planning purposes.

This underscores the primary shortcoming of the existing Neighborhood Plan:  
**There have never been any questions asked about what the future will bring.**  
Simply put, the Plan has no idea what development is likely to occur and therefore, no basis to plan for growth that will occur. All of the conclusions in the current Plan about capacity for transportation, sewer, water, stormwater, etc. are without factual foundation. There has been no analysis of the potential build-out of the area.

The tennis club is a prime example. We anticipate the current use to continue at least for my lifetime. But regardless of that intended purpose, the city must consider that that I would sell and it would be redeveloped (as it is a prime site for such redevelopment). There could be hundreds of additional residential units added to Fairhaven. The staff draft Plan fails to consider any possible impact on Fairhaven from such redevelopment.

Just looking at what the City Comprehensive Plan provides is not sufficient. The Comp Plan did not evaluate the particulars of actual possible growth/redevelopment. It just assumed a growth rate and juggled where the growth would go.

The lack of this analysis underscores the weak foundation of the entire Plan. Since no analysis of future build-out has been undertaken, all of the conclusions about the infrastructure capacity lack merit. This creates a practical and a legal problem. The practical problem is that the conclusions are simply irrelevant to reality. The legal problem is that the Plan will fail any analysis under the state environmental protection standards and it does not meet the requirements of the Growth Management Act.

So the first, and most vital, step for the city to undertake is to do an inventory of potential development over the life of the Plan. From that, low-, mid- and high-range possibilities of development can be generated. And then capacity analysis can be properly undertaken.

Finally, this type of analysis has to be undertaken so that the negative impacts of increased regulation (view corridors, design requirements, increased setbacks, etc.) can be evaluated. If the mid-range potential is identified without regulation and then with regulation, the delta can be analyzed and the marginal costs evaluated.

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## II. DRAFT NEIGHBORHOOD PLAN

Role of the Neighborhood Plan. Intentionally or unintentionally, the Neighborhood Plan has become the key defensive material used by project opponents in the planning process. In many different permitting procedures, different phrases, goals or policies are taken as the “rule of law.” Such individual phrases were then asserted as reasons why permitted uses should not be allowed. Appropriate or not, that has been the result. So in creating the new Plan, such unintended consequences must be avoided. So it is absolutely vital that the goals and policies be appropriately written with this in mind.

An additional problem with the existing planning goals and policies is that they are written to be “purpose specific.” This is not the role of a stated goal and policy under the Growth Management Act. Instead, the goals and policies should be what this Plan intends to achieve over its life.

This letter would go on far too long for me to edit each one. Instead, let me hit some of the most obvious ones.

### A. Economic Development Policy

*Goal 2A.1 “Enhance Fairhaven’s economic vitality in terms of the quality of life of its residents, the success of its business and the generation of tax revenue for the City of Bellingham.”*

This is not the leading economic goal of the Fairhaven Neighborhood Plan. The purpose of this entire process was to create a practical, predictable planning scheme that can be implemented objectively and evenly. This should read:

*“To develop a planning paradigm that promotes practical, predictable and equal application of this plan and the related development code to promote the economic viability of Fairhaven for the benefit of the entire city.”*

The policies under that should follow.

Is vital that all the policies be written in an objective, non-subjective manner. Please review policy 2A.4. No two people would have the same understanding of such subjective and flowery language. How can a private business be judged on whether it has certain stewardship to the environment when it is a candy store? I could hear this policy being used to object to practically any development proposed in Fairhaven.

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*Policy 2.1:* This policy modifies the scope of the design review process to be applicable to a variety of subjective and unpredictable goals that are defined in the eyes of the reader. Grammatically it states that the Fairhaven Urban Village Design Review process shall be used to preserve **public view corridors** toward the bay and the inlets. This grants an unintended view corridor over the entirety of the Fairhaven commercial core as a key policy of the design review process. This creates an impossible zoning paradigm for anyone to enforce objectively. Ambiguous, subjective language just like this has led to very expensive litigation that has delayed and even killed projects. Such unintended consequences must be avoided with proper writing.

Further, if view corridors are even to be referenced, they have to be specifically defined – where they are, the height at which they are to be identified, the views to be protected, and the spots from where the view is to be protected. Without such definition, these amount to the illegal grant of a view easement over the entirety of Fairhaven.

#### B. Industrial Areas

*Policy 2.4:* This states pretty much nothing. If the Plan is to promote industrial development, it should be definitive and applicable.

*The ability of the industrial area in Fairhaven to develop future jobs and economic activity must be promoted by maintaining current and expanding future infrastructure upon which industrial development is needed.*

That is what is required. And simply preserving existing jobs does not meet the timeline of adding jobs over the next 30 years.

I note out of interest Policy 2.13. This is a classic subjective, impractical policy that will allow any project to be defeated because someone believes it is not “compatible with the character of the Fairhaven Neighborhood.” Language like this must be eliminated if this Plan is to be functional. Our courts have found such vague, subjective language to be unconstitutionally vague.

#### C. Residential Areas

*Policy 2B.1:* None of these policies truly look to the future to accept the necessary infill mandated by GMA. If we had zero population growth, the entire matter would be different. But the population has and will continue to grow. Therefore, the housing policies for this residential area must address its ability to accommodate increased density and increased residential capacity. If any one neighborhood in the city

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is allowed to “just say no” to any new residential development, all neighborhoods will. And if that is to occur, the city must embrace sprawl as a key part of its planning doctrine.

This is an area where true planning research has not been undertaken. The infill capacities of the residential areas of Fairhaven do exist and yet they have not been identified, therefore, they cannot be planned for.

### Chapter 3 Development Character and Design

*3.1:* History is being recreated through this Plan. While the national historic district does have certain historic buildings, the vast majority of Fairhaven does not. Imposing restrictive design characteristics behind the existing commercial core will increase the cost of development, decrease the viability of development projects, and thwart the efforts to have this Tier One Urban Village accept infill. And this has been a key deficiency with the entire planning process: There is no information developed to identify the cost of imposing the broad-based design review policies. The city cannot adopt a plan or scheme of imposing restrictive design standards if the resulting limitations upon development (either for use or by cost) defeat the ability of this area to promote sustainable development that the city needs.

Just think of the issue with affordable housing. Expensive design requirements mean increased costs. Increased costs make affordable housing an impossibility. This is one of the many trade-offs that this Neighborhood Plan fails to address. Maybe we would all like to have a “little Leavenworth” *a la* Fairhaven style where everything is the same. But such design requirements increase costs significantly, limit architectural expression and will prevent many uses that are beneficial to our community. No accounting for the economic impact has ever been undertaken for:

- Proposed height limits
- Increased design criteria
- Expansion of design review area
- Undefined view corridors
- Huge sidewalk requirements

I can go on. But it is clear that all of the subjective jargon and additional requirements will have a significant cost impact. These costs and trade-offs must be quantified before an informed decision can be made.

For example, look at Policy 3.8. Providing “pleasant and safe mid-block walkways between buildings” defeats economy of scale. No one can efficiently use a

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block of land if it is cut into quarters or halves by public walkways. And do they work? Look at the unfortunate dead space that has been created in the Young Building. Imposing such requirements without real planning is a travesty. I note with a smile that the building in the picture right next to that policy (which is an exceptional addition to Fairhaven) has no such mid-block walkways. And it does not because such walkways are not economically feasible for the utilization of an entire block.

Further, Policies 3.5 through 3.18 are simply used as additional obligations imposed as policies but would have the effect of additional development code. And each one of these is written with such imprecise language that practical, fair and predictable application of the policies is simply impossible. Complying with one policy will result in violation of another policy. Having such conflicting and vague language simply defeats the effort to have a more practical and applicable planning paradigm for Fairhaven. And this will be used by the usual project opponents to litigate each permit. Property owners know that (with such subjective language in a Plan) and will have to factor in significant litigation costs and delay on all projects.

No one from the city staff has recognized this or even attempted to include consideration of these impacts. **This is a significant issue regarding the planning process — failure to consider the consequences.**

*History Preservation and Sustainability:* This simply adds onto the impracticality of this Plan. All of the statements under that section are very nice and could be very practical in Disneyland. The problem is that the various statements in it will be used subjectively by either staff or opponents to impose unintended consequences and defeat an effective and efficient planning process.

*Fairhaven Design Review Areas:* Again, has the city even considered the cost of expanding the Fairhaven Design Review District? The answer is no. One can only wonder why an industrial area should be covered by any design review code. Industry, by its nature, is built to function and produce goods and resources for the community. There has to be some recognition that imposing these design standards so broadly only increases the inefficiency of this Plan.

#### Chapter 4 Parking

This Plan fails to look at the 30 year horizon (See Section I). *How much parking will be needed?* How can we plan without knowing the answer?

Now there is no dispute that over the life of the Plan demand for parking will increase. As such, the only way to meet that increased demand (efficiently and

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effectively) is through some centralized parking facility. If additional parking is not added, all of the intended policies of the Plan will fail because no one will build. Yet there is nothing in the Plan motivating the creation of centralized parking. The measures discussed may address today's parking issues, but not tomorrow's.

Yes, mention is made in the technical appendix of a parking garage. But that document is not one that is acted upon. The Plan is. There is simply no discussion of locating, planning for and financing a centralized parking facility. No discussion of capturing tax revenue (sales tax or otherwise) and to start planning for the location of a centralized parking facility now.

If it is not put into the Plan now, it will not happen over the life of the Plan. The city must plan accordingly and undertake the study now to identify sites that might be available and infrastructure developments that will be necessary to develop a centralized parking facility. Simply stating that a public garage "could be explored further" is insignificant and inappropriate.

## Chapter 5 Natural Environment

Is Proposal 5.1 really in the best of interest of Fairhaven? Or is this a community-wide obligation? Even your own city staff has stated that the cost of undertaking this project does not reflect the marginal benefit that could be received. This is a perfect example of a "purpose specific" goal that was included not for the benefit of Fairhaven, but for the benefit of the person who is promoting it.

*Conclusion Regarding Neighborhood Plan:* I would ask you to request city staff to scrub this entire Plan to eliminate the subjective, vague and conflicting language. Instead, definitive and declarative sentences should be used with the anticipation that they have to be applied practically, fairly, predictably and objectively.

## III. DESIGN STANDARDS

These design standards are effectively used as zoning obligations. Accordingly, they must be written as code without subjective, vague language that can be applied inconsistently. From the outset, this Plan references other material such as the statement "more detail about review procedures or the requirements for documentation that must be submitted can be obtained from city staff, or the city's website." Having been involved in this process before, the procedures, standards, policies, etc. cannot be allowed to change over time and must be specifically identified.

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With regard to the design review district areas, why have all residential areas been left out? If this is one neighborhood, the historical structures that we do have in a residential area must benefit from the same review obligations as the commercial areas.

Without going through too many particulars, these design guidelines impose significant costs upon the property owners. For example, Policy 2 under Industrial Influence Area is simply a cost additor. Has any person looked at the relative cost vs. the benefit?

Under Pedestrian Connectivity, has anyone evaluated the loss of a developable area if mid-block walkways are required? This type of inventory is necessary to evaluate whether this is feasible in the sites identified.

Under Building Design, specific standards have to be identified or not referenced at all. As we saw from the *Fairhaven Harbor* litigation, subjective application of these codes created tens of thousands of dollars of fees and costs by unnecessarily complicating the entire process.

Simply put, the standards in this section either need to be left out or incorporated as specific code. If not, they cannot be applied efficiently, effectively, practically and objectively.

I know that I am voicing something contrary to many people's opinions. But the city has to evaluate the impact of subjective design (standards and policies) upon the development of Fairhaven. Do we really want lengthy litigation over every project that one or more person does not like?

And more importantly, we do not want to create Leavenworth in Bellingham? If one looks at historic cities such as London, Paris, Portland and Barcelona, it is the varied architecture that creates the vibrant nature of the commercial areas. Does the City of Bellingham truly want to kill this by imposing Leavenworth uniformity in the hopes of creating something that never really existed in Fairhaven?

#### IV. CONCLUSION

I apologize for the length and rambling nature of this letter. But it reflects the problems with the Draft Plan — the failure to objectively state the goals in conjunction with the continued use of subjective, vague language defeats the goal of this process. We cannot have an objective, predictable, and consistently applied regulatory structure if it is based upon the Plan to date. Instead, we simply have a significant amount of feel good language that does little or nothing to truly help plan for the future. This will impose

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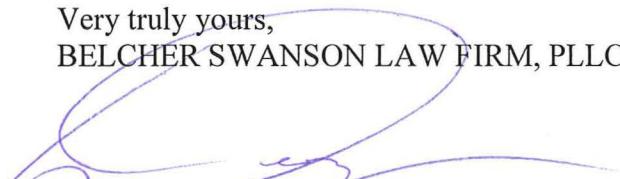
huge costs to our community (and the city in trying to defend the Plan) as it is applied to a growing urban village.

Here is the solution:

1. Establish Anticipate Growth: Undertake a survey of all property owners in the Fairhaven Neighborhood to develop possible development levels. Pick a conservative mid-level for development. Then estimate the increase in demand for infrastructure. Upon that, re-analyze current capacity and need for future expansion (and payment for such expansion). Contact Mr. Burnett for he has done all of this work over a much larger area in Ferndale.
2. Prioritize Goals/Policies: Credentialed planning staff should prioritize the Goals needed in the Plan and then the policies that support those Goals. A work session should be held with stakeholders to review these. Then final edits should be made to eliminate subjective, vague language that will impede the need for clarity in Plan application. As part of this, there has to be consideration of the impacts (financial and other) from imposition of various goals/policies (i.e., mid-block walkways and undefined view corridors).
3. Redraft Plan with the Goals and Policies Addressing Future Growth: With the foregoing, the Plan can be redrafted to make certain that the Goals and Policies are not limited to polishing today's Fairhaven. But building the foundation for a well planned and executed Fairhaven in 2022, 2032 and 2042.

Thank you again for the opportunity to participate in this process.

Very truly yours,  
BELCHER SWANSON LAW FIRM, PLLC



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