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**BEFORE THE
WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

DONNA MACOMBER,
HAROLD W. MACOMBER,
HELEN GREEN, and
LARRY HOROWITZ
Petitioners,

Case No:

PETITION FOR REVIEW

v.

CITY OF BELLINGHAM,
Respondent.

I. PETITIONERS

A. Petitioners **Donna & Harold W. Macomber** are residents of Whatcom County and reside at:
159 W Larson Rd, Bellingham, WA 98226
(360) 398-1612

Petitioners consent to receiving all filings and documents via e-mail at:
macdon1957@comcast.net.

B. Petitioner **Helen Green** is a resident of Whatcom County and resides at:
4294 King Ave, Bellingham, WA 98226
(360) 734-0524

Petitioner consents to receiving all filings and documents via e-mail at:
lvgarlic@comcast.net.

C. Petitioner **Larry Horowitz** is a resident of the City of Bellingham and resides at:
212 Sea Pines Rd, Bellingham, WA 98229
(360) 325-0448

Petitioner consents to receiving all filings and documents via e-mail at:
NOT2L82TRY@comcast.net.

1 **II. ACTION FOR WHICH REVIEW IS SOUGHT**

2 RCW 36.70A.070 of the *Growth Management Act* (GMA) states: “The
3 [comprehensive] plan shall be an internally consistent document and all elements shall be
4 consistent with the future land use map.”

5 This petition for review alleges that the newly adopted *2005 Bellingham*
6 *Comprehensive Plan*, published on June 9, 2006, is out of compliance with the GMA because
7 it violates the internal consistency requirement of RCW 36.70A.070 in its treatment of the
8 City’s park and recreation level of service and the City’s park and recreation land to be
9 acquired.

10
11 **III. ISSUES PRESENTED FOR REVIEW**

12 The *2005 Bellingham Comprehensive Plan* includes three separate chapters that address
13 the City’s park and recreation level of service (“Park LOS”), the City’s park and recreation
14 land to be acquired (“Park Acres”), or both.

15 Chapter 7 is the City’s *Parks, Recreation and Open Space (PRO) Plan*, which
16 establishes the number of *Park Acres* that the City intends to acquire through 2022. As
17 indicated in *Bellingham Municipal Code* §19.04.050(P), the *Proposed Level of Service* (PLOS)
18 from the PRO Plan includes the number of *Park Acres* that the City intends to add to its current
19 inventory. (See *Exhibit I* attached.)

20 Based on the PRO Plan’s *Proposed LOS*, Bellingham intends to add **1,896** *Park Acres*,
21 including **896** “non-watershed” acres and **1,000** “watershed” acres. Bellingham’s current
22 inventory of City-owned land totals **3,289** acres, including **2,718** “non-watershed” acres and
23 **571** “watershed” acres.

24 According to a member of the Bellingham City Council, watershed acquisitions are **not**
25 parks. “They are acres set aside to protect the drinking water and, according to the guidelines

1 developed by our Watershed Advisory Committee, are to be returned to forestry acres as soon
 2 as possible, as that use provides the best level of protection (i.e. filtration) for the reservoir.
 3 Parks [Department] has no regulatory authority over watershed acres... Watershed acres
 4 should never have been added to the PRO Plan.”

5 Clearly, there is a distinction between “watershed” and “non-watershed” land owned by
 6 the City; however, the *Bellingham Comprehensive Plan* has failed to make the necessary
 7 distinction in the appropriate chapters. Failure to do so has caused inconsistencies between
 8 Chapter 7 (Park & Recreation), Chapter 3 (Land Use), and Chapter 5 (Capital Facilities).

9 Pages 89, 118 and 360 of Bellingham’s *PRO Plan* (Comp Plan Chapter 7) establishes
 10 the following Park & Recreation Levels of Service (*Park LOS*) as of the year 2022: (See
 11 *Exhibit 2* attached.)

	"Non- Watershed"	"Watershed"	Total
Current Acres: Year 2002	2,718	571	3,289
Acres to be acquired through 2022	896	1,000	1,896
Year 2022 Acres	3,614	1,571	5,185
Year 2022 Projected Population	113,055	113,055	113,055
Year 2022 LOS (Acres per 1,000 Population)	32.0	13.9	45.9

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 20 By contrast, page CF-47 of the Capital Facilities Element (Comp Plan Chapter 5) states
 21 that the City’s Park & Recreation Level of Service (*Park LOS*) is 42 acres per 1,000 people and
 22 fails to distinguish between “watershed” and “non-watershed” land. (See *Exhibit 3* attached.)
 23 Clearly, the 42-acre LOS in Chapter 5 is internally inconsistent with any of the LOS amounts
 24 in Chapter 7 (32.0, 13.9, or 45.9).

1 By further contrast, the Land Use Element (Comp Plan Chapter 3) includes a land
2 supply analysis which bases its 2,080-acre addition of *Park Acres* on a *Park LOS* of 47.49, a
3 level inappropriately derived from the *Existing LOS* chart within the PRO Plan (rather than the
4 correct *Proposed LOS* chart). (See *Exhibit 4* attached.) Clearly, the 47.49-acre LOS in
5 Chapter 3 is internally inconsistent with any of the *Park LOS* amounts in either Chapter 7 or
6 Chapter 5 (32.0, 13.9, 45.9, or 42). (See *Exhibit 5* attached for Page 118 of the *PRO Plan*,
7 which represents the *Existing LOS* chart.)

8 There are serious consequences that result from using inappropriate *Park LOS* amounts in
9 the Capital Facilities Element and the Land Use Element:

- 10 1) By using the wrong *Park LOS* in the Capital Facilities Element, the City cannot
11 properly budget for the acquisition of the correct number of acres to be acquired. This
12 could lead to substantial over-taxing or under-taxing property owners based on
13 incorrect data.
- 14 2) By using the wrong *Park LOS* in the Land Use Element, the City's land supply analysis
15 has understated the actual number of acres available for residential development by **830**
16 **acres**, or a massive **61%**. If the land supply analysis were corrected, the
17 recommendation to expand the City's UGA could not be justified. (See *Exhibit 6* for a
18 detailed calculation and explanation of the 830-acre error.)

19
20 The determination of property tax levels and sizing of the City's UGA are critical issues
21 that dramatically affect the citizens of Bellingham and Whatcom County. The internal
22 inconsistencies within Chapters 3, 5 and 7 of the *2005 Bellingham Comprehensive Plan*, and
23 the use of inappropriate *Park LOS* levels in the Land Use and Capital Facilities Elements
24 represent a violation of the GMA and render the City's plan invalid.

1 **IV. STANDING**

2 Petitioners **Donna & Harold W. Macomber** are residents of Whatcom County who are
3 affected by the matters at issue in this petition. Mr. & Mrs. Macomber participated in public
4 hearings and wrote letters concerning the *2005 Bellingham Comprehensive Plan* and have
5 participation standing to challenge the actions at issue pursuant to RCW 36.70A.280.

6
7 Petitioner **Helen Green** is a resident of Whatcom County who is affected by the matters at
8 issue in this petition. Mrs. Green participated in public hearings and wrote letters concerning
9 the *2005 Bellingham Comprehensive Plan* and has participation standing to challenge the
10 actions at issue pursuant to RCW 36.70A.280.

11
12 Petitioner **Larry Horowitz** is a resident of the City of Bellingham and Whatcom County who
13 is affected by the matters at issue in this petition. Mr. Horowitz wrote letters concerning the
14 *2005 Bellingham Comprehensive Plan* and has participation standing to challenge the actions
15 at issue pursuant to RCW 36.70A.280.

16
17 **V. ESTIMATED LENGTH OF HEARING**

18 The Petitioners estimate that the Hearing on the Merits for this matter will last
19 approximately one day.

20
21 **VI. RELIEF SOUGHT**

22 The Petitioners request the board remand the *2005 Bellingham Comprehensive Plan*
23 back to the City of Bellingham for action consistent with the Growth Management Act. In
24 addition, the Petitioners request the board issue a declaration of invalidity of the *2005*

1 *Bellingham Comprehensive Plan* on the grounds that the plan violates the internal consistency
2 requirements of RCW 36.70A.070.

3

4 **THE PETITIONERS HAVE READ THIS PETITION FOR REVIEW AND BELIEVE**
5 **THE CONTENTS TO BE TRUE.**

6

7 DATED this 7th day of August 2006

8

9 */s/ Donna Macomber*

10 Donna Macomber

11

12 */s/ Harold W. Macomber*

13 Harold W. Macomber

14

15 */s/ Helen Green*

16 Helen Green

17

18 */s/ Larry Horowitz*

19 Larry Horowitz

Declaration of Service

I, Larry Horowitz, declare that on August 7, 2006, I caused the following documents to be served on the persons listed below in the manner shown: **PETITION FOR REVIEW** and **ATTACHMENTS**

Western Growth Management Hearings Board

(MS: 40953)

P.O. Box 40953

Olympia, WA 98504-0953

(Original and three copies)

By prepaid U.S. Priority Mail, email, and fax (attachments by prepaid U.S. Priority Mail only)

City of Bellingham Mayor Mark Asmundson

Second Floor, Bellingham City Hall

210 Lottie Street

Bellingham, WA 98225

By hand delivery

DATED this 7th day of August 2006

/s/ Larry Horowitz

Larry Horowitz

Summary of Exhibits

Exhibit 1:

- *Bellingham Municipal Code* (BMC) §19.04.050 (P)
- Purpose: Provides evidence that the PRO Plan's *Proposed Level of Service* (PLOS) includes park and recreational land that is intended to be added to the current inventory - as opposed to the *Existing Level of Service* (ELOS) which was incorrectly used in the City's land supply analysis within its Land Use Element.
- Web Link:
<http://www.cob.org/web/bmcode.nsf/1ff0d07d5c98c0828825710200616cbf/63f155d42b95686188257130007dd202?OpenDocument&Highlight=0,19.04.050>

Exhibit 2:

- *Bellingham Park, Recreation & Open Space (PRO) Plan* (Chapter 7 of the *2005 Bellingham Comprehensive Plan*) Pages 89, 118, 360 and 25: *Proposed Level of Service (PLOS)*
- Purpose: Provides details of Bellingham's current inventory and recommended additions of *Park Acres*, including information on "watershed" acres intended to be acquired based on the PRO Plan's *Proposed LOS* (PLOS).
- Web Link:
<http://www.cob.org/documents/parks/development/pro-plan/5-demand.pdf>

Exhibit 3:

- Capital Facilities Element (Chapter 5 of the *2005 Bellingham Comprehensive Plan*) Page CF-47: *Park & Recreation Adopted Level of Service*
- Purpose: Provides the **42**-acre Park & Recreation Level of Service adopted in the City's Capital Facilities Element (Chapter 5).
- Web Link:
<http://www.cob.org/documents/planning/chapter-5-web.pdf>

Exhibit 4:

- March 13, 2006 Memo from Leslie Bryson to Chris Behee re: "Land Needed for Park Level of Service"
- Purpose: Provides evidence that the **2,080** Park Acres to be acquired in the land supply analysis within the Land Use Chapter (# 3) is based on the *Existing Level of Service* (ELOS) on Page 115 of the PRO Plan. Such use of the ELOS in Comp Plan Chapter 3 is inconsistent with the use of the *Proposed LOS* (PLOS) in Chapter 7. As confirmed by BMC §19.04.050(P) (*Exhibit 1* above), use of PLOS to determine Park Acres intended to be added is correct while use of ELOS is incorrect.

Exhibit 5:

- *Bellingham Park, Recreation & Open Space (PRO) Plan*
(Chapter 7 of the 2005 Bellingham Comprehensive Plan)
Page 115: *Existing Level of Service (ELOS)*
- Purpose: Provides information from the PRO Plan's *Existing Level of Service (ELOS)* incorrectly used in the Land Use Chapter as the basis for **2,080** Park Acres to be acquired. The 2,080 Park Acres is based on an incorrect LOS of **47.49**.
- Web Link:
<http://www.cob.org/documents/parks/development/pro-plan/5-demand.pdf>

Exhibit 6:

- Memo re: Detailed Calculation and Explanation of the 830-Acre Net Error in Bellingham's Land Supply Analysis
- Purpose: Provides proof that the land supply analysis within the Land Use Chapter includes an 830-acre net error. This error overstates the number of developable park acres needed and understates the number of residential acres available for development by 830 acres, or 61%.

Exhibit 7:

- Joint Bellingham & Whatcom County *Final Environmental Impact Statement (FEIS)*
Appendix D: Public Comment & Response: Pages D-122 and D-123
Response to Question #58 of 85 Questions submitted by Robert Tull (Langabeer, Tull & Lee, P.S.) on behalf of Caitac, USA, Inc.
- Purpose: Provides additional support that the correct number of Park Acres to be added is **1,896** as provided by the PLOS. This evidence is provided by the City of Bellingham staff's public response - during the preparation of the 2004 Joint City & County FEIS - to a question about the number Park Acres Bellingham intends to add to its inventory. When taken in context with Question #58, the response also indicates that use of ELOS is inappropriate.
- Web Link:
http://www.cob.org/documents/planning/publications/COB_FEIS/8.d.a.FEIS.Appendix.D.Comment.response.pdf

Exhibit 8:

- February 15, 2006 email from Chris Behee, Bellingham GIS Analyst to Larry Horowitz re: "1,896 acres of park land to be added"
- Purpose: Provides additional support, directly from Bellingham Planning Dept. staff, that the correct number of Park Acres to be added is **1,896** as provided by the PLOS.

Exhibit 9:

- Bellingham Land Supply Tables: "Developable Public Facilities Land Supply & Demand"
- Purpose: Supports data in *Exhibit 6* analysis re: "85 Acres acquired 2002-2005" and "250 Acres from Industrial Zones".