

NO. 67019-I

**COURT OF APPEALS FOR DIVISION 1
STATE OF WASHINGTON**

BELLEAU WOODS II, LLC,
a Washington limited liability company,

Appellant,

vs.

THE CITY OF BELLINGHAM,
a Washington municipal corporation

Respondent.

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BRIEF OF RESPONDENT CITY OF BELLINGHAM

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I. INTRODUCTION

This is the second appeal by Belleau Woods II, LLC (“Belleau Woods”) related to the imposition of park impact fees on its multi-family development.

In the first appeal, *Belleau Woods II, LLC v City of Bellingham*, 150 Wn. App. 228, 243-244, 208 P.3d (2009), the Court of Appeals held that Belleau Woods was required to pay park impact fees under BMC 19.04 and the case was remanded for reinstatement of the decision of the Hearing Examiner. This first hearing examiner decision provided for credit for qualifying facilities, including, at a minimum, the trail easement.

Following remand, another hearing was held to determine the qualifying facilities for park impact fee credit, as well as to address disputed issues related to the appraisal. The hearing examiner ruled that upon determination of the alignment of the public trail through the property, as identified in the Capital Facilities Plan, credit shall be granted for the value of the public trail portion of the easement for the entire length of the trail through the property, and for a width of 50 feet or the width of the easement through which the trail runs, whichever is less, provided that the Director may grant credit for a greater width, not to exceed the width of the easement, if deemed appropriate for trail purposes.

The decision further provided that the value of the trail portion of the easement shall be established by a private appraiser or appraisers acceptable to the City. CP 267 There was no appeal of the portion of the decision related to the value being established by a private appraiser as provided in BMC 19.04.140. Thus, this portion of the decision stands.

Belleau Woods appealed the hearing examiner decision to the superior court. CP 283-288. In upholding the decision of the hearing examiner the superior court found that the challenged Findings of Fact No. 13 and 19 were supported by substantial evidence and that, after giving proper deference, there is no erroneous interpretation of law or application of the law to the facts on the application of credit for the public trail. CP 11. These findings comport with the standards for granting relief under the Land Use Petition Act, RCW 36.70C.130, and address the issues appealed by Belleau Woods.

Belleau Woods has now appealed the decision of the trial court. CP 8. There is no dispute that the appeal is limited to the issue of what portion of the conservation easement should be given credit pursuant to the park impact fee ordinance, BMC 19.04.140. CP 35. The City has consistently maintained the position that credit is for the trail portion of the conservation easement while Belleau Woods has argued that the whole conservation easement should be given park impact fee credit.

The City hereby renews all arguments and authorities previously presented at the proceedings below, and respectfully requests that the decision of the trial court be affirmed.

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. THE TRIAL COURT DID NOT ERR IN UPHOLDING THE HEARING EXAMINER’S LAND USE DECISION THAT BELLEAU WOODS WOULD GET PARK FEE IMPACT CREDIT ONLY FOR THE PUBLIC TRAIL PORTION OF THE EASEMENT.**

- B. NEITHER THE CITY’S PARK IMPACT FEE ORDINANCE, BMC 19.04.140, NOR THE STATE STATUTE, RCW 82.02.060 (3), REQUIRE THE CITY TO PROVIDE BELLEAU WOODS WITH PARK IMPACT FEE CREDIT FOR THE ENTIRE VALUE OF THE CONSERVATION AND PUBLIC ACCESS EASEMENT WHEN :**
 - 1. The only park facility located on the easement property and identified in the Capital Facilities Plan is the public trail;
 - 2. Both the ordinance and statute plainly state that credit shall be provided for the value of any dedication of land for.....facilities identified in the capital facilities plan; and
 - 3. The conservation easement was required as a condition of a City wetland/stream permit for the development and the easement itself provides that a public trail will be constructed within one of the areas in the conservation easement.

- C. APPELLANT’S ESTOPPEL ARGUMENT IS WITHOUT MERIT AND WAS NOT RAISED BELOW. THE CITY HAS CONSISTENTLY MAINTAINED THAT PARK IMPACT FEE CREDIT WOULD ONLY BE PROVIDED FOR THE PUBLIC TRAIL PORTION OF THE CONSERVATION EASEMENT.**

II. STATEMENT OF THE CASE

Belleau Woods is the developer of an apartment complex located

at 631 West Bakerview Road, Bellingham, WA. This development was subject to a Planned Development/Design Review Contract #PDC 2003-00033, #DRC 2004-00011. CP 186-202. Section 14 – Wetlands of the Planned Development Contract required the developer to grant a conservation easement for the preserved wetland/buffer areas on the site. CP 189. The intent of the conservation easement was to protect, in perpetuity, the regulated stream (Spring Creek), regulated wetlands and wetland buffers. CP 205. These features have been preserved for the ecological benefits and functions they provide. CP 205. Further, the conservation easement contained the following language: A public trail will be constructed within one of the areas labeled “CONSERVATION AND PUBLIC ACCESS EASEMENT ON EXHIBIT A.” CP 81. No activities were allowed in the conservation easement that could cause degradation to the wetland or wetland buffer in the Easement. CP 205. The only exceptions were for disturbance necessary to construct the trail and the temporary disturbance for approved utility installation. CP 205. This conservation easement was executed in July of 2004. CP 206. The City adopted a Park Impact Fee Ordinance, codified as BMC Chapter 19.04 in 2006. This ordinance provides for payment of park impact fees at the time a building permit is issued for all residential development applied for after the effective date of the ordinance. CP 263. Belleau Woods II,

LLC is required to pay park impact fees. The only issue is what portion of the dedicated land qualifies for park impact fee credit.¹

Besides protecting the wetlands and wetland buffers, wetland mitigation has occurred in that area, all the wetland buffer mitigations are occurring there which is a requirement of both the City permit and the Army Corp permit. CP 109, Kim Weil, Environmental Planner. The City has a few of these easements that include public access. ...planning works hand in hand with the Parks Department when there is going to be a future trail. CP 109. Many, many documents have shown the trail in basically one location and that is on the northern part of the site. CP 109. Ms. Weil further testified related to the access issue as follows:

“There is a fence in already. It is required as part of the wetlands stream permit and the Army Corp permit and it basically goes around all the development part of the site and has signage as required in both those permits that this is a wetland area, sensitive area and to stay out basically. So the only access then that would be allowed is the future trail through the easement on the north.” CP 110.

¹ The Washington State Court of Appeals, Division 1, in *Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228, 243-244 (2009), has already decided that Belleau Woods was required to pay park impact fees under BMC 19.04 and the case was remanded for reinstatement of the decision of the Hearing Examiner.

Leslie Bryson, Parks Development Manager, testified that the trail is contained in the Capital Facilities portion of the Bellingham Parks and Recreation and Open Space Plan but that the conservation easement is not in the Capital Facilities portion of the plan, CP 116.² Mr. Leuthold, Parks Director, testified that the recreational trail would be appraised for park impact fee credit but not the balance of the conservation easement. CP 91. This testimony was consistent with his letter to Mr. Thulin, dated August 31, 2009, wherein he noted that credit for park impact fees is given pursuant to the Capital Facilities Plan. The trail through Belleau Woods development is identified in the Capital Facilities Plan as a neighborhood trail element for the North Bellingham area. ...the conservation easement is not an element of the parks Capital Facilities Plan. CP 221. Appendix D – North Bellingham Trail Map to the 2008 parks, Recreation, and Open Space Plan lists the Belleau Woods trail at #26. CP 228.³

² There are different levels of “plans” starting with overall policies/goals moving to specific projects:
a. Bellingham Comprehensive Plan
b. Parks, Recreation Open Space Plan (Chapter 7 of the Bellingham Comprehensive Plan)
c. Capital Facilities Plan (CFP) defined in BMC 19.04

³ Ms. Bryson testified that the 2002 plan updated June 2005 and amended in 2007 would have been in effect at the time this project was approved. However, it makes no difference because neither plan included the conservation easement in the Capital Facilities portion of the plan which was in Chapter 9 of the older version. CP 116.

III. ARGUMENT

A. STANDARDS ON APPEAL

1. Standard Of Review

This matter is an appeal by Belleau Woods under the Land Use Petition Act, RCW 36.70C. The relevant standards of review are set forth in RCW 36.70C.130 (1) which provides (in pertinent part) that a City decision may be invalidated if that decision is (1)(b) an erroneous interpretation of the law, after allowing for such deference as is due the construction of law by a local jurisdiction with expertise; (c) the land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court; and (d) the land use decision is clearly an erroneous application of the law to the facts.

The Court of Appeals stands in the shoes of the superior court and reviews the hearing examiner's action on the basis of the administrative record. *Wells v. Whatcom County Water District No. 10*, 105 Wn. App. 143, 150, 19 P.3d 453 (2001); *Belleau Woods*, 150 Wn. App. at 231. Review is limited to the record before the hearing examiner. *Deer Creek Developer's, LLC v. Spokane County*, 157 Wash. App. 1, 236 P.3d 906, review denied 170 Wn.2d 1021, 245 P.3d 774. If the decision involves an application of law to the facts, it is subject to the "clearly erroneous" standard of review. A decision is clearly erroneous when, after reviewing

the record as a whole, we are left with the definite and firm conviction that a mistake has been made....*Thornton Creek Legal Fund v. Seattle*, 113 Wn. App. 34, 57-58, 52 P.3d 522 (2002).

2. Standards For Relief

Under RCW 36.70C. 130 the party seeking relief from the land use decision, in this case, Belleau Woods, has the burden of establishing that one of the above standards of review has been met before the decision will be invalidated. Belleau Woods cannot meet this burden. There is substantial evidence in the record to support the Hearing Examiner decision.

3. Arguments Raised For The First Time On Appeal

An issue or argument not presented to the trial court cannot generally be raised for the first time on appeal. The rule is well established that this court will not consider matters not presented to the trial court, nor will this court review a case on a theory different from that which it was presented at the trial level. *State v. Reano*, 67 Wn.2d 768, 771, 409 P.2d 853 (1966).

Appellant has raised several new arguments in its brief on appeal that were not briefed or argued before the hearing examiner.

- a. That the hearing examiner failed to follow the GMA in interpreting BMC 19.04.140;

- b. That the hearing examiner erred in imposing the burden of proof on Belleau Woods;
- c. That the GMA and BMC require current inventory of park facilities and proposed park facilities - including open space – to be included in the Capital Facilities Plan; and
- d. The City is estopped from denying credit measured by the public access component of the easement.

These arguments should not be considered by this court on appeal.

B. THE HEARING EXAMINER DID NOT ERR IN INTERPRETING BMC 19.04.140.

1. The Hearing Examiner Did Not Fail To Follow The Growth Management Act (“GMA”) (RCW 36.70A), Nor Was This Argument Raised In The Proceeding Below.

Appellant’s arguments are confusing, were not raised in proceedings below, and should not be considered by this court on appeal.

“An issue not presented to the trial court cannot be raised for the first time on appeal. We do not consider the failure to raise a material issue to be a technicality.” *Riblet v. Ideal Cement Co.*, 57 Wn.2d 619, 621, 358 P.2d 975, 976 (1961).

Appellant first argues that the City’s ordinance is invalid because it fails to adhere to the standards in RCW 82.02.060(3). The City’s local impact fee ordinance was adopted pursuant to the authority of RCW 36.70C and RCW 82.02.060 and provides credit for park land dedication for facilities identified in the capital facilities plan as required by RCW 82.02.060(3). The appellant’s mere assertion of invalidity is without merit.

Then, without even fully supporting this argument, appellant argues that since the impact fees are calculated with reference to all improvements in the service area, and not on particular system improvements, it logically follows that the park impact fee credit should be calculated in the same manner. This is not the law and it does not follow logically from the Court's decision in *City of Olympia v. Drebick*, 156 Wn.2d 289, 126 P.3d 802, (2006) as claimed by appellant. The calculation of fees and the credit for park impact fees are provided for in two different subsections of RCW 82.02.060(1) and (3) which describe a method of calculating the fee and another method for providing a credit for value of dedicated land. And, while the legislature did authorize the local governments to calculate the fees by tying the particular development to the service area improvements as a whole, not to particular system improvements, *Drebick*, 156 Wn.2d 289, at 300, it does not follow that all land dedicated by the developer would be given park impact credit. This line of argument is not logical and does not follow the statute or the local ordinance adopted by the City which describes how park impact fee credit is determined.

The *Drebick* case involved the calculation of transportation impact fees imposed on a commercial developer. In *Drebick*, the Supreme Court held that the GMA (RCW 36.70A) impact fee statutes do not require local

governments to calculate impact fees by making individualized assessments of the new developments' impacts on each improvement planned in a service area. Rather, the GMA impact fee statutes permit local governments to base impact fees on area-wide infrastructure improvements reasonably related and beneficial to the particular development seeking approval. *Drebick*, 156 Wn.2d 289, at 308-309. Reliance on the *Drebick* case for the illogical proposition that the developer is therefore entitled for credit for the entire land dedication, whether or not the park facility is identified on the capital facilities plan, is misplaced.

Under RCW 82.02.060(3) and BMC 19.04.140, a developer is only entitled to credit for a dedication of land for improvements to, or new construction of any system improvement provided by developer, **to facilities that are identified in the capital facilities plan** (emphasis added). Conversely, open space, created by wetland mitigation requirements, requires setbacks and buffer setbacks, not intended for public access and not identified as a park facility in the capital facilities plan, is not entitled to park impact fee credit. Appellant continues to ignore the statutory requirement that the land dedication is required to be a facility identified in the capital facilities plan; continues to argue that since open space is defined as one component of the overall park system, that

this conservation easement is automatically entitled to credit; and ignores the practical reality that the developer does not decide what facilities are on the City's capital facilities plan. This is decided by the Parks department and the City Council in adopting the annual plan. CP 105.

The Hearing Examiner found that the City's Capital Plan for Parks, Recreation, and Open Space includes a proposed trail through the Belleau Woods II development. No other facilities are identified in the Plan to be located or developed on the site. CP 264. The City would submit that this finding of fact was supported by substantial evidence in the record. CP 53.

2. Belleau Woods Was Held To The Proper Burden Of Proof On The Issue Of Credit For The Park Impact Fee Pursuant To RCW 36.70C And BMC 19.04.070.

Appellant next argues that establishing compliance with the GMA requires the City to bear the burden of proof citing *Isla Verde Int'l v. City of Camas*, 146 Wn.2d 740, 759, 49 P.3d 867 (2002). Again, a challenge to the issue of a qualifying facility for park fee credit issue based on failure to comply with the GMA (RCW 36.70A) was not raised below. Not only was the issue not raised but the appellant has previously conceded in its own pleadings that this matter is an appeal of a land use decision under the Land Use Petition Act (RCW 36.70C) and that in such an appeal, the burden of proof falls to the party seeking relief from the land use decision.

CP 70, 35, 41. The trial court's decision also clearly reflects that the matter was before the court under RCW 36.70C.130. CP 6. Appellant's attempt to raise a different legal theory should not be considered by this court. There is nothing in the record before the Hearing Examiner to support this argument and it is wholly without merit in any event.

The Appellant has the burden of proof under the applicable law, RCW 36.70C.130, this finding by the Hearing Examiner is supported by the law and facts, and was not challenged by the appellant below. CP 294. In this appeal, appellant has failed to establish that the hearing examiner decision was an erroneous interpretation of RCW 19.04.140.

C. THE SUPERIOR COURT DID NOT ERR IN UPHOLDING THE DECISION OF THE HEARING EXAMINER FINDING THAT ONLY THE TRAIL PORTION OF THE CONSERVATION AND ACCESS EASEMENT IS ENTITLED TO PARK IMPACT FEE CREDIT BASED ON THE REQUIREMENTS OF THE GMA AND BMC.

Appellant's next set of arguments (Sections 2, 3, and 4 of its brief at p. 17-25) are all variations on the same theme: that all open space in the City is part of the capital facilities plan by virtue of open space being listed as a park classification CP 29 and having open space throughout the City being depicted on a map of recommended facilities. CP 30. This theme is supported only by appellant's misinterpretation of BMC 19.04.050 and of the framework of the City's Comprehensive Plan.

Appellant argues that the City is required to put all open space in the City in its Capital Facilities Plan (“CFP”) by virtue of RCW 82.02.060(3), RCW 36.70A.070, and BMC 19.04.050. These statutes do not require that of the City. The statutes require the CFP to identify proposed locations of expanded or new park facilities. The City complied with the statutes. Substantial evidence in the record supports the conclusion that the City intended that only the trail portion of the conservation easement be a proposed part of the park system. CP 101, 105, 115, 116. Thus, that is the only facility required to be identified in the CFP. The City did not violate the GMA nor the BMC by not including the entire conservation easement in its capital facilities plan.

RCW 36.70C.130 (b) provides that a court may only grant relief to an appellant in a land use appeal if the party seeking relief has carried its burden of establishing that the land use decision was an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise or if the decision is not supported by substantial evidence in the record. Appellant has not met that burden. The record contains substantial evidence that the City never intended to include the entire conservation easement in the parks system and that it was not identified in its capital facilities plan. Further, the Hearing Examiner is entitled to deference on interpretation of

local ordinances and the City's Comprehensive Plans. The hearing examiner determination that credit should be limited to the trail portion of the easement should be upheld.

Finally, the testimony and documentary evidence supports a finding that the trail was identified on the easement contrary to the appellant's assertion. CP 109-110.

D. THE CITY IS NOT ESTOPPED FROM DENYING IMPACT FEE CREDIT FOR THE ENTIRE CONSERVATION EASEMENT

Appellant's estoppel argument should not be considered by the court as it was not briefed or argued below. CP 284-285. *See Riblet v. Ideal Cement Co.* 57 Wn.2d 619, 621, 358 P.2d 975, 976 (1961).

Even if the issue had been properly raised, the argument concerning equitable estoppel is without merit under the facts of this case. The *Henderson Homes, Inc. v. City of Bothell*, 124 Wn.2d 240, 877 P.2d 176 (1994) case appears to be cited by appellant solely for the general statement of law pertaining to equitable estoppel. This case points out that equitable estoppel is not favored, and the party asserting it must prove each element by clear, cogent, and convincing evidence. *Henderson*, 124 Wn.2d at 249. Appellant has no evidence to establish any of the elements.

The cite to *View Ridge Park v. Mountlake Terrace*, 67 Wn. App. 588, 839 P.2d 343 (1992) also provides little support to Belleau Wood's

assertion of equitable estoppel in this case. In the *View Ridge* case, there was no dispute that Mountlake Terrace had agreed to credit the landscaping against the amount of View Ridge's recreational facility obligation. Mountlake Terrace argued that it was not bound by the agreement because the idea to substitute additional landscaping was proposed by View Ridge. The Court held that the City was estopped from asserting that it was not bound by the agreement. *Id.* at 599. The doctrine of equitable estoppel rests on the principle that "a party should be held to a representation made or a position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon." *Wilson v. Westinghouse Electric Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975), *Emrich v. Connell*, 105 Wn.2d 551, 559, 716 P.2d 863 (1986). In the present case, the City has consistently maintained that Belleau Woods would receive park impact fee credit for the public access component of the conservation easement and that credit would be limited to the public access component... CP 221. Appellant has no other representation or position to rely upon.

Belleau Woods continues to argue that the statement in Mr. Leuthold's letter dated August 31, 2009, ... "Therefore the credit must be limited to the value of the **public access component** of the Conservation Easement" (emphasis added) somehow means credit for the entire

property covered by the easement. This argument is disingenuous. Appellant's conclusionary statement, that "Public Access Component" in the Parks Director's letter means the entire easement, is not persuasive when you consider the common dictionary definition of those words and all the testimony in the record. The word "limited" and the phrase "public access component" have common meanings. These words describe and limit credit to a portion of property less than the entire easement. Limited is defined as "confined within limits: restricted in extent" *Websters' Third World New International Dictionary, Unabridged*, 198, p. 1836. Component means "a constituent part" and constituent means "serving to form, compose, or make up a unit or whole," *Websters'* at 466, 486. Clearly, the City never represented to Mr. Carey that he would get park impact fee credit for the entire conservation easement. The language used supports the finding that there was a limit to a part of the Conservation Easement for impact fee credit. There is no estoppel argument under the facts of this case.

E. THE CITY OF BELLINGHAM IS ENTITLED TO ATTORNEY FEES PURSUANT TO RCW 4.84.370 (2); BELLEAU WOODS IS NOT ENTITLED TO ATTORNEY FEES

It is undisputed that this matter is an appeal of a land use decision under the Land Use Petition Act, RCW 36.70C. In the appeal of land use

decisions, the applicable statute for determining an award of attorney fees is RCW 4.84.370. This statute provides that reasonable attorneys' fees and costs shall be awarded to the prevailing party on an appeal to the court of appeals. The City whose decision is on appeal is considered the prevailing party if its decision is upheld at superior court and on appeal. RCW 4.84.370(2). Under this statute, a party in a land use action who "prevails or substantially prevails" at the administrative level as well as at both the superior and appellate court levels is entitled to fees on appeal." *Benchmark Land Co. v. City of Battle Ground*, 94 Wn. App. 537, 550-551, 972 P.2d 944, 951 (1999); "Under this statute, parties are entitled to attorney fees only if a county, city, or town's decision is rendered in their favor and at least two courts affirm that decision." *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 413, 120 P.3d 56, 64 (2005). The City of Bellingham's decision was upheld at superior court. On the contrary, Belleau Woods did not prevail in any prior proceeding, and, even if it prevailed in this appeal, Belleau Woods would not be entitled to an award of attorney fees. Thus, if the City prevails in the court of appeals, it is entitled to attorney fees and costs on appeal.

Belleau Woods asserts that it is entitled to attorney fees under RCW 64.40.020 (2). This assertion is wholly without merit. Belleau Woods did not file an action for damages under RCW 64.40. A section of

this chapter, RCW 64.40.030, requires that any action to assert claims under the provisions of this chapter shall be commenced only within 30 days after all administrative remedies have been exhausted. There can be no argument that the statute of limitations on any damage action under RCW 64.40 has long since passed. Even assuming that appellant had such a claim, Appellant is foreclosed from filing any action for damages related to the determination of park impact fee credit. Since the appellant did not file a damage action there is no basis for an award of attorney fees.

Finally, appellant's mere citation to *Ivy Club Investors v. Kennewick*, 40 Wn. App. 524, 699 P.2d 782 (1985) without argument is unpersuasive. The *Ivy Club* action involved a park fee imposed on a condominium conversion. Ivy Club sued for a refund of the fee. The Ivy Club action was filed within 30 days of the City's refusal to refund the park fee, which would have been its last administrative remedy. The Court determined that this was "action" as defined in RCW 64.40 and the trial court had an opportunity to hear and decide the issues. The trial court then awarded attorney fees under RCW 64.40.020(2). *Ivy Club*, 40 Wn. App. at 531. In the present case, the claim was not properly filed or raised in the trial court, the statute of limitations has run, and the issue of attorney fees under that section is not properly raised before the appellate court.

IV. SUMMARY

No case law, statute, or evidence produced in this matter supports Belleau Woods' contention that it is entitled to park impact fee credit for the entire conservation easement. The conservation easement was required by the terms of the 2004 Planned Development Contract to provide wetland/buffer mitigation. Only a portion of that conservation easement is dedicated to a trail for public access purposes. Only the trail is identified in the Capital Facilities Plan defined by BMC 19.04.040, and thus only the trail portion of the easement is entitled to park impact fee credit. Belleau Woods has attempted to create an argument that because "open space" is classified as a park in the overall Bellingham Comprehensive Plan that this alone is a basis of entitlement to park impact fee credit. However, the impact fee statutes require more than that. They require that the land dedication be made pursuant to the Capital Facilities Plan. The testimony and documents clearly support the conclusions of law reached by the Hearing Examiner that only the trail portion is listed in the Capital Facilities Plan and only the trail portion is entitled to park impact fee credit.

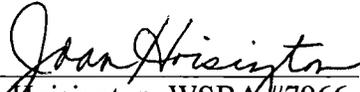
Belleau Woods did not meet its burden of proof on its contentions before the Hearing Examiner, and none of the arguments or authorities advanced herein sustain the grounds for this LUPA appeal.

V. RELIEF REQUESTED

The City respectfully requests that the decision of the Whatcom County Superior Court dated March 22, 2011, affirming the land use decision of the Hearing Examiner be affirmed and that an order be entered as follows: (1) that appellant receive park impact fee credit only for the trail, which consists of its entire length for the width of 50 feet, or the width of the easement through which the trail runs, whichever is less, provided that the Director may grant credit for a greater width of the easement, if deemed appropriate for trail purposes; (2) that the value of the trail portion of the easement shall be established by a private appraiser or appraisers acceptable to the City; and (3) that the date of conveyance was July 19, 2004, and the fair market value shall be determined as of that date by private appraiser acceptable to the City.

Respectfully submitted this 15th day of August, 2011.

CITY OF BELLINGHAM


Joan Hoisington, WSBA #7966
City Attorney