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June 25, 2008

Carl Weimer
Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Re: Lake Whatcom Residential Treatment Center Appeal, Council File AB2007-321B
(Hearing Examiner File No. CUP 06-0031)

Dear Mr. Weimer:

Squalicum Valley Community Association and other appellants in this matter (referred to collectively as SVCA) request that the Council issue a stay prohibiting the Lake Whatcom Water & Sewer District ("District") from taking any further actions in reliance on CUP 06-0031 pending the outcome of the current appeal.

As you are aware, SVCA has timely appealed the Examiner's April 8, 2008 decision granting CUP 06-0031 to the District. The administrative appeal process is guided by Ch. 20.92 WCC.

In a May 29, 2008 letter to you, the District indicated that "the project was going out to bid despite the appeal" and that the District "is proceeding with construction." SVCA believes this runs afoul of the County's administrative appeal process and that a stay of any further action by the District while this appeal is pending is warranted.

Nothing in the Whatcom County Code specifically dictates whether an applicant may proceed with their project while an appeal is pending before the County Council. But based on the Council's authority to hear appeals and remand, revise or condition the Examiner's decision, allowing a project to proceed while such an appeal to the Council is pending would undercut, if not make a mockery of, the Council's clear authority.

Carl Weimer
June 25, 2008
Page 2

On appeal, the Council has the same ability as the Examiner to condition a project. WCC 20.92.820. The ability of the Council to impose new conditions is rendered meaningless where the applicant proceeds with its project while the appeal is pending.

This is particularly true where the conditions may be related to actions that would be taken by the proponent at the outset of the project. In this case, one of the primary issues raised by SVCA is the size of the pipe and pump station that are necessary for the applicant's project. SVCA asserts that the proposed pipe and pump station are significantly oversized for the demand created by the project and, therefore, will facilitate urban sprawl outside the UGA in violation of RCW 36.70A.110(4) and the County's Comprehensive Plan.

The Council may very well determine that the project should be denied in its current form or that it may go forward, only on the condition that the project size be reduced to the size necessary to serve the existing facility. By beginning construction for this project before the Council acts, the District is foreclosing the Council's ability to condition or deny the project as allowed under WCC 20.92.820.

The Council also has the authority to remand the case back to the Examiner under certain conditions. WCC 20.92.710. This Code section also is rendered worthless if the applicant may proceed with its project before the County Council has had an opportunity to consider whether a remand is warranted under the conditions listed above.

The Council's decision represents the "final" decision of the County. Prior to the Council's decision on appeal, the County has not reached a "final" position on whether the permit should issue or how it should be conditioned. Allowing construction based on the Examiner's appealed decision eliminates the Council's options and the effectiveness of any decision or condition they may choose to impose. In the interest of preserving the integrity of the appeal process, the Council should issue a stay.

Generally, a stay may be issued by a court to preclude an applicant from acting in accordance with a prior decision where that decision is being appealed. See City of University Place v. McGuire, 144 Wn.2d 640, 646 (2001) (trial court granted stay pending appeal of Examiner's permitting decision); CR 62(b). The Council should use its inherent authority to either make clear that there is no final decision under which the District can currently proceed or issue a formal stay prohibiting additional actions by the District while the appeal is pending.

The Council has recently granted SVCA's request for a 60 day extension, thereby allowing SVCA's arguments to be submitted in writing by August 4, 2008. In the interest of facilitating prompt resolution of this case, SVCA is willing to forego the final 20 days of this extension if the Council concludes that the District may not take action based on the Examiner's decision pending the

Carl Weimer
June 25, 2008
Page 3

Council's determination on appeal. SVCA is willing to submit its written materials by July 15, 2008.

Very truly yours,

BRICKLIN NEWMAN DOLD, LLP

A handwritten signature in black ink, appearing to read "David A. Bricklin", with a long horizontal flourish extending to the right.

David A. Bricklin

DAB:kmw