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March 21, 2025

City of Camas Hearings Examiner
c/o Robert Maul
616 NE 4th Avenue
Camas, WA 98607
rmaul@cityofcamas.us

Re: Camas Woods

Dear Mr. Maul,

We represent the applicant and are submitting this letter together with a Technical Memorandum from Kittelson & Associates on proportionality and a memorandum from AKS on the difference in cost between a roundabout and a traffic signal. The applicant requests the City undertake a proportionality analysis and develop a proportionate share or other mechanism to fund the SR 500/Everett Drive roundabout because it would be disproportional to impose the full cost of this improvement on the applicant.

A summary of the law of proportionality may be helpful. RCW 82.02.020 directs that “no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the ... development ... of land.” *Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hearings Bd.*, 166 Wn. App. 172, 197, 274 P.3d 1040, 1052 (2012); See also *Citizens’ Alliance for Prop. Rights v. Sims*, 145 Wn. App. 649, 656, 187 P.3d 786 (2008), review denied, 165 Wn.2d 1030 (2009).

Washington courts have held that RCW 82.02.020 applies to development conditions adopted pursuant to the Growth Management Act. *Citizens’ Alliance*, 145 Wn. App. at 663. Since the concurrency rules are imposed by RCW 36.70A.070(6), which is a Growth Management Act provision, the Citizens’ Alliance case tells us that RCW 82.02.020 supersedes RCW 36.70A.070(6). *Id.* In other words, any conditions imposed to satisfy concurrency must meet the requirements of RCW 82.02.020.

The Washington Court of Appeals has interpreted RCW 82.02.020 to mean that the burden of demonstrating that demanded street improvements are “reasonably necessary as a direct result of the proposed development or plat” lies with the local government, not the applicant:

RCW 82.02.020 mandates that a government imposing requirements such as the clearing limits here demonstrate that the restriction is “‘reasonably necessary as a direct result of the proposed development or plat.’” Our supreme court has repeatedly held that this statute requires “that development conditions must be tied to a specific, identified impact of a development on a community.” The plain language of the statute does not

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permit conditions that are reasonably necessary for all development, or any potential development. Rather, the statute specifically requires that a condition be “reasonably necessary as a direct result of the proposed development.”

Citizens' Alliance for Prop. Rights v. Sims, 145 Wn. App. 649, 665, 187 P.3d 786, 794 (2008) (footnotes omitted).

Courts have held that the percentage used to calculate proportional shares “is equal to the fraction of the new car trips that the . . . plat will generate out of the total car trips” that will use the intersection. *City of Fed. Way v. Town & Country Real Estate, LLC*, 161 Wash. App. 17, 52 n.37, 252 P.3d 382, 400 (2011).

In addition to the protection afforded applicants under RCW 82.02.020, the takings clause of Fifth Amendment to the US Constitution (as applicable to the states under the Fourteenth Amendment) also protects property owners and applicants from unconstitutional demands for exactions. The US Supreme Court established the proportionality standard in *Dolan v. City of Tigard*, 512 U.S. 374, 386-94, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). In that case, the City of Tigard demanded that the landowner deed a flood plain and a bike path to the City as a condition of land use approval for an expanded plumbing store. The *Dolan* Court held that an exaction requiring dedication of land is an unconstitutional taking of property unless the exaction is “roughly proportional” to the impact of the proposed development. *Id.* at 386, 391.

The US Supreme Court subsequently held that the *Dolan* “proportionality” rule applies to both monetary and non-monetary exactions, including street improvements, and that the *Dolan* rule prohibits the government from denying a permit to avoid “proportionality.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013).

The state and federal cases are consistent that the City, not the applicant, has the ultimate burden of establishing proportionality. *David Hill Dev., LLC v. City of Forest Grove*, 688 F. Supp. 2d 1193, 1211 (D. Or. 2010); *Dolan*, 374 US at 391. To demonstrate “proportionality” the local government must make an “individualized determination” that the required payment is related in both extent and nature to the proposed development’s impact. *Dolan*, 374 US at 391; *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013).

We hope the Kittleson Technical Memorandum and the memorandum from AKS on the cost difference between a roundabout and a signal will be helpful to the City in undertaking the required proportionality analysis.

Finally, we note that a roundabout is 53% (about a million dollars) more expensive than a traffic signal, but as noted in the Kittleson memorandum, a traffic signal would adequately mitigate the additional traffic from a capacity standpoint. We understand the City of Camas made a policy determination to require roundabouts along Everett Street through its Everett Street Corridor study.

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That study was based on a variety of factors, including factors other than traffic impacts, such as “noise,” “Camas Look and Feel” and “Private Property Impacts.”

Upgrading from signals to roundabouts may have a variety of benefits, many of which go beyond merely mitigating traffic impacts, but the full cost of such upgrades designed to provide broad and somewhat subjective community benefits by requiring roundabouts instead of signals cannot be constitutionally placed solely on new development. It has long been held that new development cannot be made to fix existing deficiencies.

As the Court noted in *Citizens' Alliance, Burton v. Clark County* states the applicable standard for determining nexus and proportionality:

[T]he government must show that the development for which a permit is sought will create or exacerbate the identified public problem. This is the same as to say that there must be a relationship (nexus) between the development and the identified public problem; that the necessary relationship will exist if the development will create or exacerbate the identified problem; but that the necessary relationship will not exist if the development will not adversely impact the identified public problem. Thus, the *Nollan [v. California Coastal Commission]*, 483 U.S. 825, 831, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987)] Court rejected an easement that would have improved public access to the beach, even though the Commission's staff report said improved public access was needed, because the Nollans' project, replacing a bungalow with a new house, would not make the identified public problem, lack of public access, any worse than before. Similarly, the *Dolan* court rejected Tigard's exaction of a floodplain easement that would have enhanced the public's recreational opportunities, even though such opportunities were needed, because Dolan's project, a larger retail outlet, would not make the identified public problem, the public's lack of recreational opportunities, any worse than before. These holdings are consistent with the fundamental purpose of the Takings Clause, which is not to bar government from requiring a developer to deal with problems of the developer's own making, but which is “to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

Citizens' Alliance for Prop. Rights v. Sims, 145 Wn. App. 649, 669, 187 P.3d 786, 796 (2008) quoting *Burton v. Clark County*, 91 Wn. App. 505, 521-22, 958 P.2d 343 (1998) (footnotes omitted) (quoting *Dolan*, 512 U.S. at 384).

Since roundabouts are substantially more expensive than signals (in this case a million dollars more) but do not provide substantially more traffic capacity than signals, the increased costs of roundabouts are not properly (or constitutionally) born solely by new developments. As

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documented in the Everett Corridor Study, the benefits of roundabouts are mostly intangible benefits to the community as a whole, and as the court stated in *Citizens Alliance*, such benefits must be paid by the community as a whole. An individual development can only be required to mitigate impacts of that development.

The applicant believes that the best way to fund the SR 500/Everett Drive roundabout would be for the applicant to construct it and receive 100% of the actual construction cost as TIF credit. This approach has worked in other jurisdictions such as Battle Ground and Ridgefield and we believe this may also be the best approach for the City of Camas.

We look forward to discussing this issue further and reviewing the City's proportionality analysis as we approach the hearing.

Sincerely,

LANDERHOLM, P.S.



STEVE C. MORASCH
Attorney at Law

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