LeAnne M. Bremer, P.C.
Admitted in Washington and Oregon
leanne.bremer@millernash.com
360.619.7002 (direct)

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VIA EMAIL LEANA@CI.STEVENSON.WA.US

Mayor and City Council
City of Stevenson
c/o Leana Kinley, City Administrator
7121 E. Loop Road
PO Box 371
Stevenson, WA 98648-0371

Subject: Public Comment for the Upcoming City Council Meeting on August 11, 2022 Regarding the Proposed BLA Code Amendments – Ordinance 2022-1183

Dear Mayor Anderson and City Council Members:

I represent Rick and Julie May, property owners within the City of Stevenson. On their behalf, I am submitting this public comment into the record of the City Council meeting to be held on August 11, 2022 regarding the proposed code amendments to the boundary line adjustment (BLA) provisions in Ordinance 2022-1183. Please include this entire letter in the City Council packet. The Mays have the following comments:

SEPA Compliance

In the recitals for proposed Ordinance 2022-1183 it is noted that the text amendments in the ordinance are categorically exempt from SEPA. There is no categorical exemption listed in WAC 197-11-800 for an amendment to a land use ordinance. On the contrary, WAC 197-11-704(2)(b) defines nonproject actions subject to SEPA as including adoption of ordinances that contain standards controlling use or modification of the environment.

The proposed ordinance is more than housekeeping or procedural. There are significant, substantive changes to the BLA approval criteria that could curtail approval of BLAs currently allowed under code, if the City determines that the BLA is being used to circumvent the platting rules for instance. Also, an additional approval criteria is added that would allow the City to deny a BLA if it is being used to create a parcel that is heavily encumbered with critical areas so that it would qualify for a reasonable use exception. These added rules most definitely control the use of the environment and could result in more denials of BLAs. For that reason, the City must complete the SEPA process before it adopts this

ordinance. WAC 197-11-070 specifies that until the City issues a SEPA determination, no action on the proposal can be taken.

City Council Public Hearing and Two Readings

On the agenda for the August 11th City Council meeting, Ordinance 2022-1183 is listed under the heading Council Business. It is unclear why this matter is not scheduled for a public hearing. Nor is it clear if the council will conduct two readings. Both of these are required in the Council's adopted rules found here:

> https://www.ci.stevenson.wa.us/sites/default/files/fileattachments/city_council/page/98/city_council_rules_of_procedure-rev_9.21.pdf

Section 8 of the rules specifies that the purpose of a legislative public hearing is to obtain public input on legislative decisions addressing matters of policy. This proposed land use ordinance is a matter of policy on what approval criteria will be used for BLAs and could have a significant impact on what BLAs the City will approve.

In addition, Section 9 states that two readings of an ordinance are required except when there is an urgent need. This meeting is not advertised as an emergency meeting under Section 2 of the rules.

Accordingly, before the City Council adopts Ordinance 2022-1183 it must conduct a public hearing and have two readings of the ordinance in successive meetings so that it can receive adequate public comment and input.

Substantive Comments on Proposed Ordinance

The Mays offer specific comments on the proposed amendments to SMC 16.37.010, the approval criteria for BLAs:

1. New #8 is an improvement on the existing language in the code except that it should be modified as follows to match the City engineering standards in Section 2.22.B.1. (additions noted in underlining):

> 8. Will not allow access onto an arterial or a major collector street within the city if alternative access is available.

2. New #9 is highly problematic. We realize that this language is borrowed from the Camas Municipal Code (CMC 17.07.040(F)), but that does not make it lawful if it has not been challenged. This new criterion would allow the City to deny BLAs if they are found to circumvent the subdivision or short plat procedures or used in manner that is inconsistent with statutory intent. Examples of what BLAs the City might not approve include numerous and frequent adjustments or a large number of contiguous lots proposed for adjustments at the same time.

This criterion, if adopted, would be unlawful as inconsistent with the state platting statute in chapter 58.17 RCW. First, there is no way for a BLA to circumvent platting rules when platting rules must be followed to create lots and a BLA at its essence cannot create more lots. Second, it would be highly subjective for the City to determine if a BLA is being used to circumvent platting rules if that were even possible. Land use ordinances must be clear in what they prescribe and cannot be left to the unfettered discretion of the City. Third, there is no prohibition in state law on an owner recording multiple and frequent BLAs, if they choose to do so, nor is there any limit on the number of lots to be adjusted in state law.

The Washington Supreme Court in *Seattle v. Crispin,* 149 Wn.2d 896 (2003) addressed a similar regulation. There, the court ruled that as long as a BLA does not create any more lots it is allowed and there is no distinction in the law between minor and substantial adjustments, as a lower court found, where the Seattle allowed "minor" BLAs but not "substantial" BLAs. The court explained, "[n]or would such a rule be workable, and would perhaps be unconstitutional." *Id*. at 905. The proposed criterion in #9 would also be significantly unworkable.

In *Cox v. Lynnwood*, 72 Wn.App. 1 (1993), the City denied a BLA because it adjusted the boundary of six lots that allowed property to be further divided in a short plat where the City believed this was a way for the owner to get around applying for a standard subdivision. The Court ruled that avoiding a subdivision was not a valid basis for denying the BLA. If the BLA met the City criteria, the Court ruled it must be approved. Here, the City may argue that if a criterion is added to the code addressing the "circumvention" issue, then a BLA could be denied based on adopted criteria and meet the *Cox* test. But adding a circumvention criteria does not give the City the green light to deny a BLA on this basis because there is no authority for this criterion in the first place. Under RCW 58.17.040(6), BLAs are allowed and exempt from platting rules if they do not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains sufficient area and dimension to meet

minimum requirements for width and area for a building site. Allowing the City to deny a BLA based on a finding that it is a disguised plat is subjecting a BLA to platting rules in violation of RCW 58.17.040(6).

Lastly, the proposed change to SMC 16.37.020 (Definitions) that says, "[a] boundary line adjustment is generally between two lots" should be stricken. Not only is this not the case, but there is also no support in the law to limit BLA approvals to two lots. It is also not clear how this sentence will come into play in the approval process since it is not a specific requirement (nor could it be). If any owner requests an adjustment to three lots, will it be denied, and on what basis?

In sum, the Mays urge the City not to include #9 in the BLA approval criteria nor the language above in the Definitions section in the proposed ordinance. If the City is inclined to adopted #8, the word "major" should be added as a qualifier to "collector" consistent with the City's engineering standards. At a minimum, the City should complete the required processes to comply with SEPA and its own rules for a public hearing, and two readings of the ordinance.

Very truly yours,

LeAnne M. Bremer, P.C.

cc: Rick and Julie May
Ken Woodrich
Ben Schumaker