



Tina M Louveau
03/31/99 11:20 AM



To: Whom It May Concer
cc:

Subject: Ordinance No. 10910

The filing of the attached "Petition to Save Public Property and Access at Hoag's Pond" abated Ordinance No. 10910 and placed it on hold pending further action.

On September 21, 1998, City Council passed Ordinance No. 1998-09-078 repealing Ordinance No. 10910.

**WHATCOM COUNTY
AUDITOR'S OFFICE**

County Courthouse, Suite 105
P.O. Box 398
Bellingham, WA 98227-0398

Auditor
Elections
Internal Auditing
Motor Vehicle Licensing
Recording



SHIRLEY FORSLOF
AUDITOR
TERRY HINZ, C.P.A.
CHIEF DEPUTY

**PETITION FOR ELECTION BY THE REGISTERED
VOTERS OF THE CITY OF BELLINGHAM**

RECEIVED FROM: Christine Weinberg - Finance Officer, City of Bellingham

"Petition to Save Public Property and Access at Hoag's Pond"
name

(360) 676-6900
phone

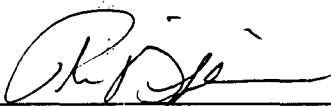
210 Lottie Street
address

Bellingham WA 98225
city state zip

TOTAL NUMBER OF PAGES: 269

TOTAL NUMBER OF SIGNATURES: 2,632

Received this 26th day of January, 1998.



Pete Griffin, Election Supervisor
Whatcom County Auditor

255
Referendum petition

- the short form

I, the undersigned registered voter of Bellingham, in order to keep public property and access around Hoag's Pond, submit this petition for a Referendum on City Ordinance 10910

Signature 

① Name (Print) PAUL BROWER

Address 1007 E. MAPLE ST.

Bellingham, WA Zip 98225

Phone 734-7267

First Class
Stamp Required
Postal Service
will not deliver
without postage

Instructions:

Sign the personal petition form above and then print your name, address and phone number in the appropriate spaces. Re-fold this pamphlet so that your signature is on the inside and seal it with tape or a staple. Attach a first class stamp and drop it in the mail before January 20.

For more copies of this pamphlet, information about the referendum, or to have petitions collected, call 733-9211 or visit our website at <http://nwcitizen.com>

Yet Another Citizen
Concerned about Bellingham
Ordinance 10910

Tip Johnson
P.O. Box 4307
Bellingham, WA 98227

mail before January 20, 1997

The Hoag's Pond Referendum
What's all the fuss about?

In a nutshell, the City Council goofed in a property deal with a city employee. We, the citizens, voters and taxpayers of Bellingham, want a chance to undo the mistake. A fair and square deal requires both a happy buyer and a happy seller. The deal so far has not been a good deal for the City and could get a lot worse.

If you want to have a say in the City's land deal, please sign the referendum petition.

By filing a referendum petition with 1,500 signatures, the matter would be placed before the voters at the next election. Once the petition is filed, the Council's error in passing Ordinance 10910 is frozen until the election. Everyone will get an opportunity to consider the facts and decide if the Council acted wisely.

The referendum is a basic part of the legislative process. The citizens have the power and authority to propose new city ordinances by initiative and to pass final judgment on Council actions by the referendum. These powers guarantee that Council members uphold their duty as representatives of the people and not serve special interests. The power of referendum is the final step in all city ordinances. It is our guarantee of good government. We do not surrender this power to anyone, not the Council, the Mayor, or City employees.

1920s -- The City of Bellingham acquires a piece of abandoned property near Hoag's pond through a tax foreclosure. This property is enclosed within Choat's property. The City property include rights of way on 26th and Kellogg Streets.

1930s -- Hoag digs a 3.5 acre pond in the City right of way on Broad Street between 25th and 26th. Neighborhood children freely use the pond for swimming in the summer and skating in the winter.

1970s -- Jack Choat, an employee of the Bellingham Public Works department, buys the Hoag property. Choat begins restricting public access to the pond.

August 1996 -- Mr. Choat sends a letter to the Bellingham planning department proposing a land swap. In his letter, Choat states "Draft copies of this proposal have been presented and discussed" with staff in the City Attorney's, Public Works and Parks departments.

January 1997 -- Greenways Advisory Committee hears presentation on "Hoag Lake property exchange." Approved unanimously. Approval implies Greenways had no future interest in Choat's property.

April 1997 -- Real estate review committee meets to discuss a request from Choat to trade city property to trade city owned property for his own. Committee recommends approval of trade subject to a street vacation.

June 1997 -- Draft ordinance doing a land trade for street vacations is entered on City Council agenda bill for June 16 City Council meeting.

July 1997 -- Council introduces new agenda bills on the street vacation ordinance and a resolution declaring the City property surrounded by the Choat property to be surplus. The resolution and ordinance surrender the City's claim to public access and rights of way on Kellogg, 26th and Broad. Greenways Advisory Committee moves to reconsider the property swap. Some committee members walk the property with Choat to see the property for themselves.

August 28, 1997 -- The Greenways Advisory Committee considers new information on the deal and withdraws their approval. The minutes of the meeting omit the reasons why the committee found problems with the deal.

October 1997 -- A real estate appraisal for the City values the entire Choat property at \$330,000. According to the Bellingham Herald, the value would be "much higher" if it incorporated the City property and street vacations.

November 1997 -- Citizens pass the Beyond Greenways tax levy to pay for trails, parks and open space. After the election, Choat's property is chosen for possible acquisition by the Beyond Greenways Committee -- a different committee than the Greenways Advisory Committee.

December 1, 1997 -- City Council gives the street vacation ordinance 10910 first and second readings. City Planning Director Patricia Decker suggests postponing the decision so that new information can be evaluated and considered. The ordinance passes 4-3.

December 8, 1997 -- City Council does the third and final reading on Ordinance 10910. It passes 6-1, with Councilwoman Louise Bjornson the sole opponent.

December 19, 1997 -- Mayor Mark Asmundson vetoes Ordinance 10910, saying that he wants the council to reconsider the deal. City Council President Pat Rowe immediately schedules a special session to vote on overriding the veto, allowing lame duck Council members Bruce Ayers and Bob Hall to vote.

December 20, 1997 -- The Bellingham Herald prints its first story on the deal. The major portion of the story is devoted to proponents' support for the ordinance and the land swap.

December 21, 1997 -- Herald editorial urges Council members to "listen to the public."

December 23, 1997 -- City Council holds special session at 11:30 a.m. to consider overturning the Mayor's veto. The meeting is scheduled during the middle of a working day, but 40 citizens show up hoping to testify. Council President Pat Rowe rules that public testimony on the facts would be inappropriate and states that "no new information" has emerged which would justify such testimony. Councilwoman Louise Bjornson moves to table the matter for a public hearing, but her motion dies for a lack of a second. The Council votes 6-1 to override the Mayor's veto, with Bjornson the sole dissenter. Citizen Tip Johnson publicly pledges to lead a referendum campaign to allow the public to consider all the facts.

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham - Planning and Community Development
210 Lottie Street
Bellingham, WA 98225

↑ Reserved for Recording Purposes Only ↑

DOCUMENT TITLE: *Ordinance*

GRANTOR(S): *City of Bellingham*

GRANTEE(S): *B.J. and JoAnn Choat*

ABBREVIATED LEGAL DESCRIPTION: *A portion of Broad Street abutting Lots 13-17, Block 3 and Lots 8-12, Block 4, Wardner's Add to Fairhaven and the western 34 feet of 26th Street abutting the southern 70 feet of Lot 13, Block 4, Wardner's Add to Fairhaven,*

ADDITIONAL LEGAL DESCRIPTION: *ON EXHIBIT "B" OF DOCUMENT*

ASSESSOR'S TAX/PARCEL NUMBER(S): *N/A*

ORDINANCE NO. 10910

AN ORDINANCE RELATING TO THE VACATION OF A PORTION OF BROAD STREET ABUTTING LOTS 13-17, BLOCK 3 AND LOTS 8-12, BLOCK 4, WARDNER'S ADD TO FAIRHAVEN AND THE WESTERN 34 FEET OF 26TH STREET ABUTTING THE SOUTHERN 70 FEET OF LOT 13, BLOCK 4, WARDNER'S ADD TO FAIRHAVEN, AS SHOWN IN EXHIBIT A, ALL SITUATED WITHIN THE CITY OF BELLINGHAM; FINDING AND ADJUDGING THAT NO DAMAGE ACCRUE TO ANY PERSON OR PROPERTY BY REASON THEREOF, AND UTILITIES MOVED SHALL BE MOVED AT THE EXPENSE OF THE PETITIONER.

WHEREAS, the Technical Review Committee has considered the petition of B.J. and JoAnn Choat for the vacation of a portion of Broad Street abutting Lots 13-17, Block 3, and Lots 8-12, Block 4, Wardner's Add to Fairhaven and the

western 34 feet of 26th Street abutting the southern 70 feet of Lot 13, Block 4, Wardner's Add to Fairhaven,

WHEREAS, this Street Vacation shall enhance the efficient trail connection of the Interurban Trail to the Connelly Creek Natural Area by allowing the City acquisition of lands owned by the petitioners,

WHEREAS, all the jurisdictional steps preliminary to the vacation have been taken as provided by law,

NOW THEREFORE,

THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. That a portion of Broad Street abutting Lots 13-17, Block 3 and Lots 8-12, Block 4, Wardner's Add to Fairhaven and that portion of 26th Street described as the western 34 feet abutting the southern 70 feet of Lot 13, Block 4, Wardner's Add to Fairhaven, both as shown in Exhibit A, are hereby vacated.

Section 2. That said vacation is not subject to reservation of rights to the City of Bellingham for easements. Any utility to be moved shall be moved at the expense of the petitioner.

Section 3. That no damage will result to any person or persons or to any property by reason of the vacation of said property.

Section 4. That the Petitioner's fees have been waived for the vacation of the property described in Section 1 as part of and in consideration of a purchase agreement by the City of Bellingham.

PASSED by the Council this 8TH day of DECEMBER, 1997.



Council President

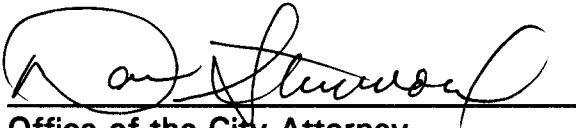
APPROVED by me this _____ day of _____, 19____.

Mayor

ATTEST: _____

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published: 12-26-97

I, **BYRON ELMENDORF**, Parks and Recreation Director of the City of Bellingham, do hereby certify that the purchase agreement as specified in Section 4 of this ordinance has been signed and approved.

Byron Elmendorf, Parks & Recreation Director

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360)676-8903

DIRECTIONS TO THE SITE(S):

Travelling east or west on Old Fairhaven Parkway (Hwy 11), turn south onto 24th Street which becomes 25th Street. Turn left onto Broad Street which is a gravel road/driveway. Broad Street vacation begins just past the private drive sign.

For the site on 26th Street, travel south on 24th (25th) as before, go past Broad and turn left onto College Street. Look for blue flags/stakes where College Street right-of-way turns south into 26th Street.

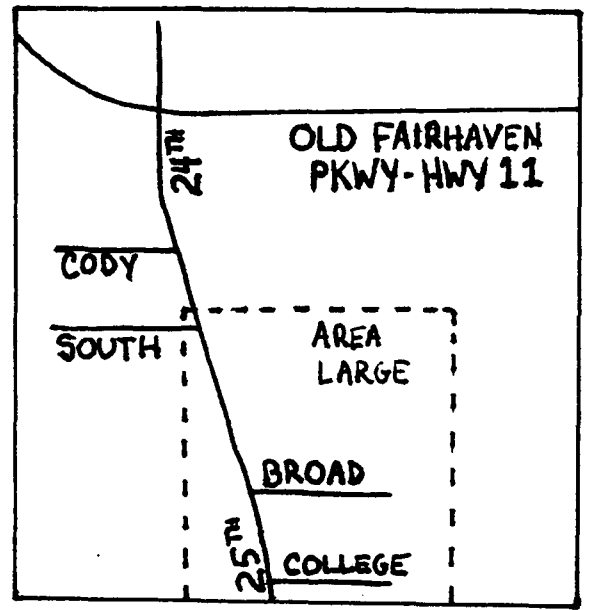


EXHIBIT A

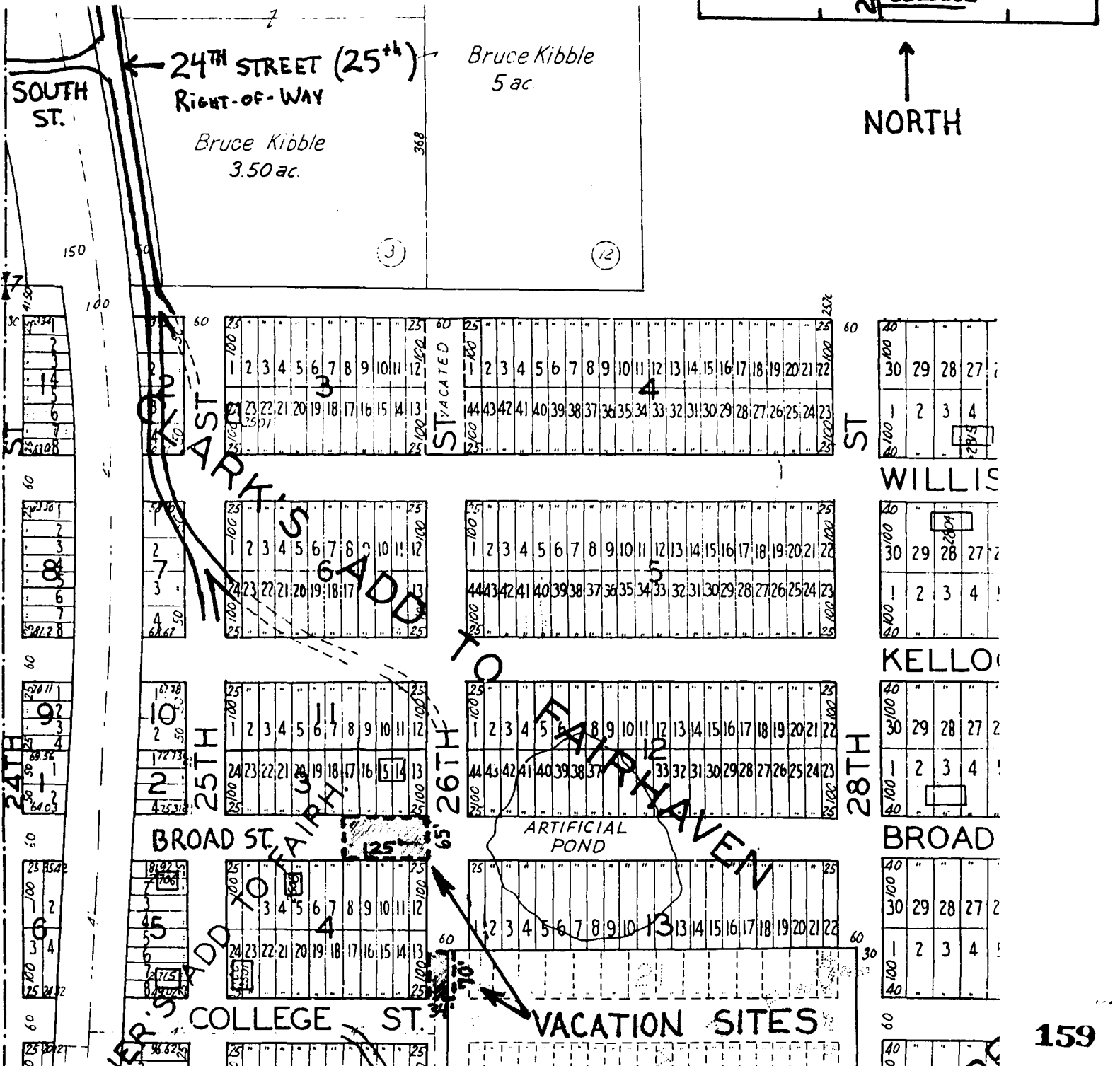


Exhibit B1:

Legal Descriptions of Properties

City of Bellingham owned Surplus Property:

Lots 13-16, Block 6, Lots 40-44, Block 5, Clark's Add to Fairhaven

B.J. and JoAnn Choat owned property:

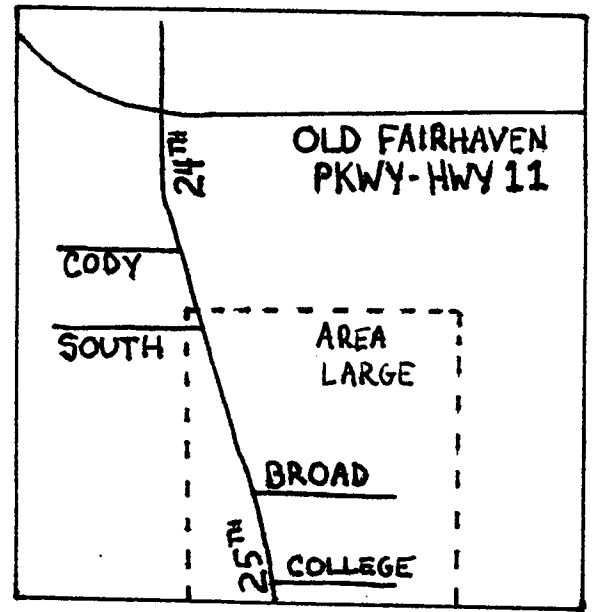
Lots 22-23, Block 5 and Block 12, Lot 22, Block 13, Clark's Add to Fairhaven,
and a parcel described as:

Beginning at a point 112' south of south line of Broad Street and 33.2' west
of east line of 28th Street, thence south 363' to north line of Wilkin Street,
thence west 47.4', thence north 363', thence east 47.4' to point of beginning,
within Happy Valley Add to Fairhaven, Amended.

DIRECTIONS TO THE SITE(S):

Travelling east or west on Old Fairhaven Parkway (Hwy 11), turn south onto 24th Street which becomes 25th Street. Turn left onto Broad Street which is a gravel road/driveway. Broad Street vacation begins just past the private drive sign.

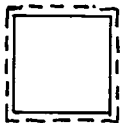
For the site on 26th Street, travel south on 24th (25th) as before, go past Broad and turn left onto College Street. Look for blue flags/stakes where College Street right-of-way turns south into 26th Street.



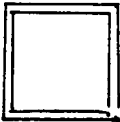
NORTH

1" = 200'

Exhibit B



PROPERTY OWNED BY CITY
TO BE EXCHANGED WITH:



PROPERTY OWNED BY CHOAT

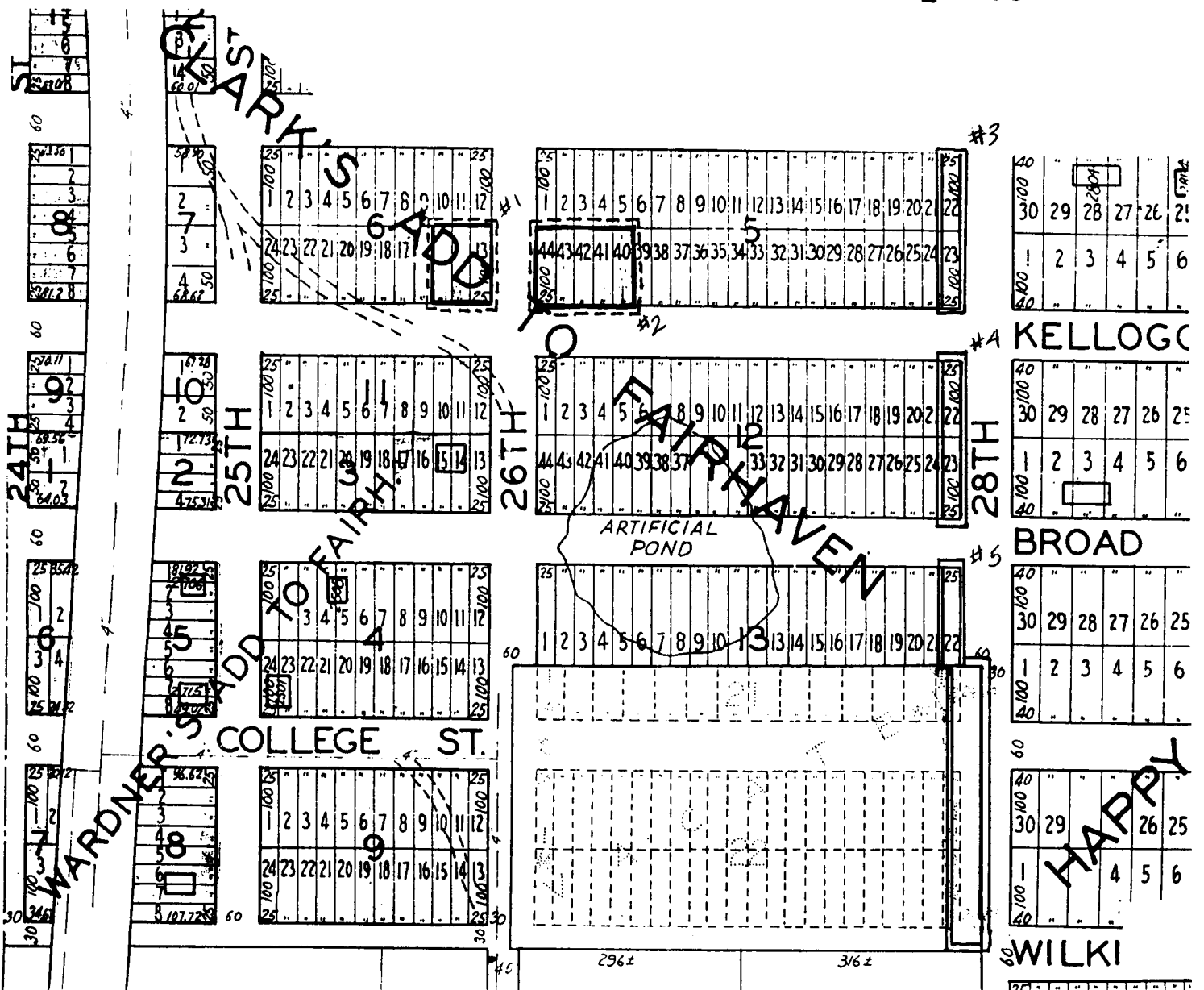


Exhibit C: Revised Code of Washington

35.79.035

Municipal corporations by legislature of its power to vacate streets. *Ponischil v. Hoquiam Sash & Door Co.* (1906) 41 Wash. 303, 83 P. 516.

2. Objections

An abutter suffering damage peculiar to himself because of street vacation is entitled to recover compensation. *London v. City of Seattle* (1980) 93 Wash.2d 657, 611 P.2d 781.

A person suffers a special injury as the result of a street vacation when his land becomes landlocked or the access thereto is substantially impaired. There is no such special injury if there remains an alternate mode of egress from or ingress to the land, even if less convenient. *Hoskins v. Kirkland* (1972) 7 Wash.App. 957, 503 P.2d 1117.

Inconvenience to property owner, as result of street vacation, that is common to all travellers does not constitute substantial impairment of access. *Banche-*

basis for enjoining vacation of street, where street would only be closed to vehicular traffic and church retained excellent access to system of streets remaining; and plaintiffs had no standing to question purpose for which city council granted vacation notwithstanding it was for private use of hospital, where it was not claimed vacation was result of collusion or fraud, and it was concluded that their access was not substantially affected, so as to constitute interference with vested right. *Capitol Hill Methodist Church v. Seattle* (1958) 52 Wash.2d 359, 324 P.2d 1113.

Only those owners whose property directly abuts an portion of street or alley vacated or alleged to be obstructed, or those whose rights of access are substantially affected, have such special interest in the matter as to enable them to enjoin enforcement of vacating ordinance, enacted pursuant to this statute. *Taft v. Washington Mut. Sav. Bank* (1923) 127 Wash. 503, 221 P. 604.

35.79.035. Limitations on vacations of streets abutting bodies of water—Procedure

(1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or

(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the

streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights of way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(b) Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;

(c) Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

Enacted by Laws 1987, ch. 228, § 2.

35.79.040. Title to vacated street or alley

If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each.

Enacted by Laws 1965, ch. 7, § 35.79.040, eff. March 5, 1965.

Historical and Statutory Notes

Source:

Laws 1901, ch. 84, § 3.
RRS § 9299.

Exhibit D: Summary of Appraisal

Value of

- surplus properties owned by the City,
- streets to be vacated, and
- properties along 28th to be dedicated to the City

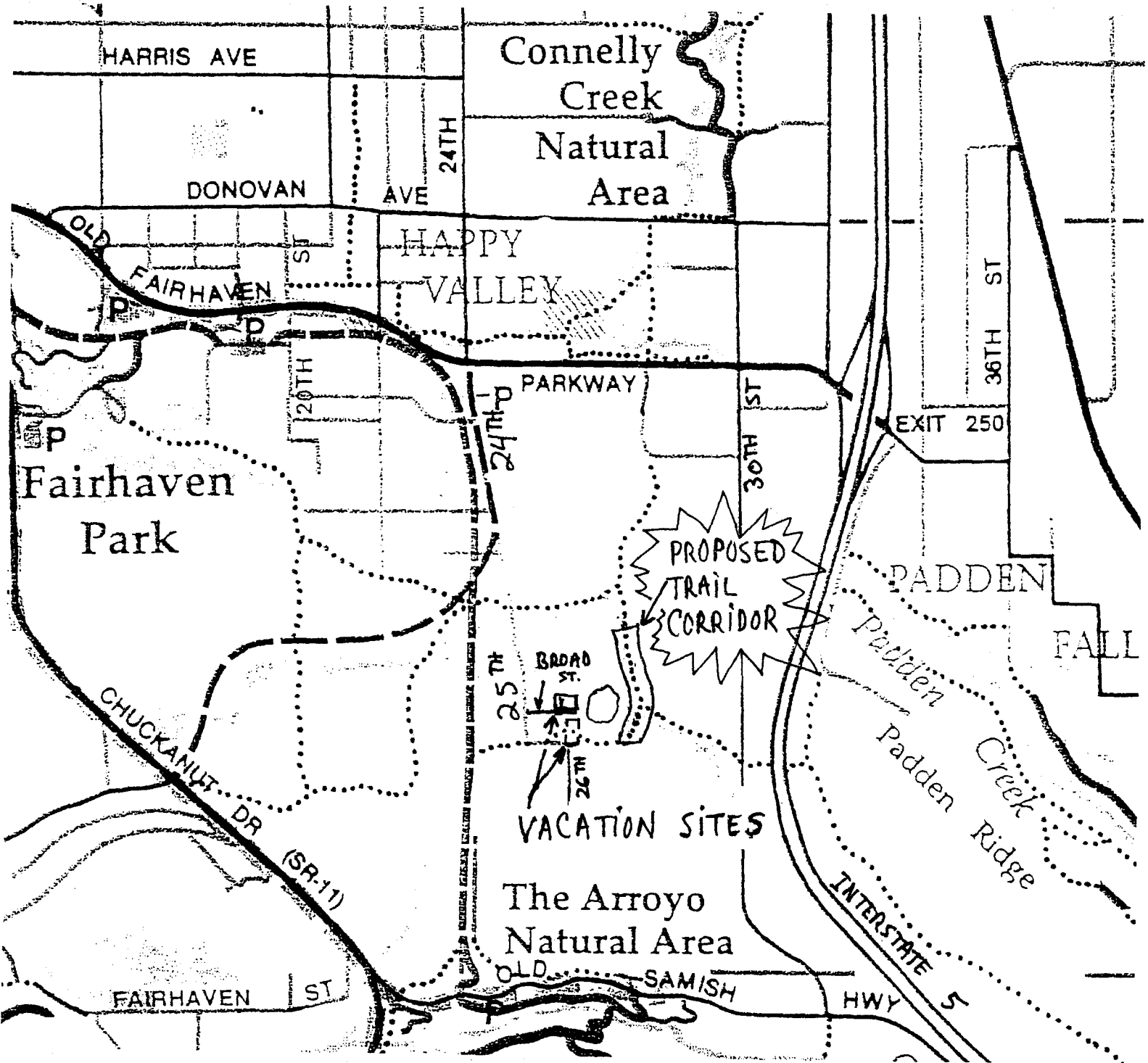
(All values are rounded)

<u>Property Description</u>	<u>Size in</u> <u>Square Feet (sf)</u>	<u>Value/sf</u>	<u>Total Value</u>
Properties to be acquired by the landowner:			
Surplus Properties Owned by the City of Bellingham:			
Kellogg and 25th, NW corner:	7,500	\$0.60/sf	\$ 4,500
Kellogg and 25th, NE corner:	12,500	\$0.60/sf	\$ 7,500
Both Properties:	20,000	\$0.60/sf	<u>\$12,000</u>
Streets Proposed to be Vacated:			
Broad and 26th Streets to One-half of this value:	10,500	\$0.52/sf	\$5,500 <u>\$2,700</u>
Subtotal Owed by Landowner:	\$12,000 + \$2,700 =		<u>\$14,700</u> <Owed by Landowner>
Properties to be dedicated to the City:			
Properties along 28th St. to be dedicated to the City by the landowner:	32,000	\$.52/sf	<u>\$16,500</u> <Owed to Landowner>
<u>TOTAL OWED TO Landowner:</u>			
\$16,500 owed to landowner less \$14,700 owed by landowner:			<u>\$ 1,800</u>


Whatcom County Assessment Comparison:

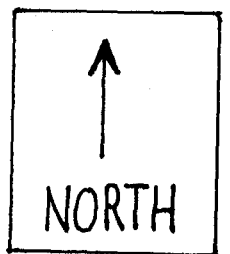
In comparison: The most recent public assessment (dated September-October, 1996) sets the value of nearby properties between \$0.14 - .28/sf (undeveloped properties) to \$1.03 - 1.15/sf (developed properties).

Exhibit E: Greenways Proposed Trail Corridor



TAKEN FROM "BELLINGHAM GREENWAYS
GUIDE MAP," by NORTH CASCADES
INSTITUTE, 1996.


 PORTION OF FUTURE TRAIL
CORRIDOR LOCATED ON
CHOAT PARCELS AND 28TH
STREET RIGHT-OF-WAY



P = PARK (EXISTING & PROPOSED)

Exhibit F:

Greenways Committee Minutes

for July 24, 1997
(Revised 8/28/97)

Members Present: Del Lowery, Roy Ingham, Dorothy Ross, Susan Taylor, Wayne Hagan, Judy Price, Chuck Holden, Seth Fleetwood

Members Absent: Elaine McRory, Shelley Weisberg, Richard Maneval

Staff Present: Leslie Bryson, Byron Elmendorf

Guests Present: Louise Bjornson

Old Business:

A. Choat Property Exchange. Staff explained the neighborhood concerns expressed at the City Council meeting regarding the exchange. Council member Bjornson requested further GAC input on the matter. Lowery initiated a motion that the GAC reconsider its earlier approval of the exchange of the City-owned property on Kellogg Street and street vacation for property along the 28th Street right-of-way, and that a vote would be taken on the Choat proposal or an alternative at the August GAC meeting. A Saturday, July 26 field trip to the Choat property was scheduled to begin at 10:30 at the Rotary Trailhead on the Interurban Trail.

MINUTES OF GREENWAYS COMMITTEE MEETING for August 28, 1997

Members Present: Del Lowery, Dorothy Ross, Susan Taylor, Wayne Hagan, Judy Price, Seth Fleetwood, Richard Maneval

Members Absent: Roy Ingham, Elaine McRory, Shelley Weisberg, Chuck Holden

Staff Present: Leslie Bryson, Tim Wahl

Old Business:

Choat Property Exchange. Citing new information and contacts with neighbors, Lowery expressed disagreement with giving up public access on the west side of the pond. Hagan voiced support for a reasonable level of public access to the pond rather than for all types of public recreation and suggested private open space stewardship as a way to protect the area's wildlife and water qualities. It was moved that the GAC withdraw its previous support for the land exchange as currently proposed and the motion was approved by a vote. Several members expressed ambivalence on the exchange and suggested waiting until an overall development and/or preservation plan was developed for the Hoag Lake area.

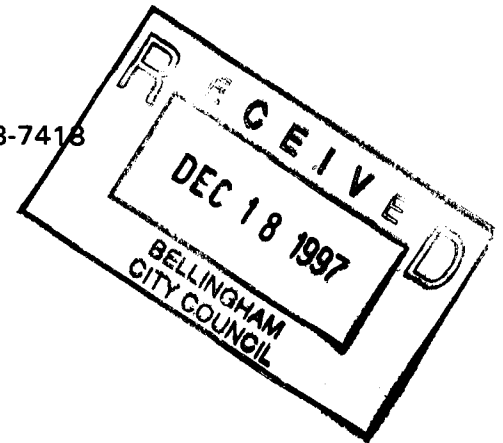


MARK ASMUNDSON

Office of the Mayor

210 Lottie Street, Bellingham, WA 98225

Telephone: (360) 676-6979, FAX: (360) 738-7418



TO: City Council

FROM: Mayor Mark Asmundson 

DATE: December 18, 1997

SUBJECT: Veto of Ordinance # 10910

Pursuant to Section 3.04 of the Charter of the City of Bellingham, I am returning to you unsigned the above-referenced ordinance. This ordinance would vacate a portion of Broad Street in the South neighborhood.

My objections to this ordinance arise from the public comments expressed and careful analysis of all of the circumstances in light of concerns brought forward.

While I believe that the time may come where it is deemed appropriate to vacate this portion of Broad Street and enter into the land trade transaction of which this vacation was a part, I do not believe that time has yet arrived.

The voters have recently approved the Beyond Greenways measure, which creates new opportunities in the area. Also, development patterns in the general vicinity of this property are at present uncertain. These factors have caused me to conclude that now is not the right time to go forward with the street vacation.

In my years on the council, I can recall the City being faced with the difficulty, costs, and frustration arising from street vacations that have taken place in the past, when it was later discovered that in light of changed circumstances, the right-of-way was in fact needed for the benefit of the public.

In view of the changes we can anticipate in this region over the next short term, it is my belief that it is imprudent to proceed with this street vacation.

Enclosure

CITY OF BELLINGHAM, WASHINGTON

ORDINANCE NUMBER: 10910

COUNCIL BILL NUMBER: 12338

AGENDA BILL NUMBER: 13337

AGENDA BILL INTRODUCED: 12.1.97

FIRST & SECOND READINGS: 12.1.97

THIRD & FINAL READING: 12.8.97

PUBLISHED: 12-26-97

*Mayor vetoed Ord. 10910
on Dec. 18 - 10 days after
passage*

*Special meeting called on
Dec. 23, 1997 to reconsider
Ord. # 10910 and Mayor's
veto. Council voted to
override the Mayor's
veto 6 to 1 (LB opposed)*

*entire
of Ord
10910
was
reconsidered
at
meeting
12/23/97*