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EXHIBIT 159  
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CITY OF WOODINVILLE  
DEVELOPMENT SERVICES

BEFORE THE HEARING EXAMINER  
CITY OF WOODINVILLE

In the Matter of Rezone and Preliminary  
Plat Application for  
  
WOOD TRAILS and  
MONTEVALLO

CITY FILE NOS.  
ZMA2004-053  
PPA2004-054 and  
ZMA2004-094  
PPA2004-093

EVIDENCE SUMMARY AND  
ARGUMENT BY CONCERNED  
NEIGHBORS OF WELLINGTON  
IN OPPOSITION TO REZONE  
AND PLATS

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EVIDENCE SUMMARY  
AND ARGUMENT - 1

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I. INTRODUCTION

Concerned Neighbors of Wellington (CNW) provides this summary of evidence and closing argument to assist the Hearing Examiner in making decisions on the applications by Phoenix Development for rezones and preliminary plats for the Wood Trails and Montevallo proposals. Because the Hearing Examiner has received evidence on both projects during the course of the public hearings on this matter, we ask that this memorandum be made a part of the record in each case.

The Hearing Examiner has before him not only two separate properties for consideration, but two very separate and distinct decisions to be made. The Montevallo and Wood Trails proposals are first and foremost for rezones from R-1 to R-4. Though preliminary plat proposals have been made, both are structured to R-4 densities and accordingly are completely dependent upon approval of the rezone applications. In the preliminary stages of these hearings, CNW has made arguments as to why the rezone issue must be heard before the decision on the plats and why the decisions on Montevallo and Wood Trails must be consolidated. We will not repeat those arguments here, but CNW adheres to these positions.

The purpose of this memorandum is to summarize evidence and legal arguments regarding both the rezone and the plat. As noted here, the rezones are inconsistent with applicable standards established by the City of Woodinville in its codes and its comprehensive plan. Because of this, the rezone proposals must be rejected. If the Examiner concludes that the rezones should be denied, there is no basis for further review of the preliminary plats and no decision should be made on them because of their clear inconsistency with zoning.

If the Examiner concludes, *arguendo*, that the rezones should be granted, or that the plats should be considered at all, CNW urges the Examiner to deny the plats. As will be shown herein, the plat proposals fail in numerous respects to meet

1 minimum standards for preliminary plats under Woodinville codes. The plats lack  
2 sufficient detail, analysis and study under Woodinville codes to be considered and  
3 even if the zoning is approved, remand is required for further articulation.

4 Based on the foregoing, this memorandum will be divided into two general  
5 parts, the first dealing with rezone issues and the second with platting issues.

6 **II. BACKGROUND FACTS**

7 The Wood Trails proposal requests the rezone of a 38.7 acre parcel into 66  
8 single family residential lots. The Montevallo proposal is to divide a 16.48 acre  
9 parcel into 66 single family residential lots with surplus density proposed to be  
10 transferred from the Wood Trails site to this property.

11 Both properties are located in what is an exclusively single family residential  
12 area in the northwest corner of the city. Historically, this area has been platted into  
13 a variety of large lots, averaging just under an acre in size.

14 The Wood Trails proposal is located on a steep westerly facing hillside and  
15 the Montevallo proposal has an extensive wetland on its west side. Both properties  
16 are accessed by several substandard east-west roads leading into the only  
17 collection street access at 156<sup>th</sup> Avenue Northeast.

18 **III. REZONING: BOTH APPLICATIONS FOR REZONING SHOULD  
19 BE DENIED.**

20 **3.1 Burden of Proof Is on the Applicant for a Rezone**

21 The subject proposal is a rezone from R-1 to R-4. As described in the background  
22 facts, the R-1 designation arose from the original comprehensive plan adopted in  
23 1996. The R-1 zone has not been modified since then nor has the city engaged in  
24 an all-inclusive city wide comprehensive plan revision.

25 The general rules for rezones are stated by our courts as follows:

- 26 The following general rules apply to rezone applications:  
27 (1) there is no presumption of validity favoring the action of  
28 rezoning; (2) the proponents of the rezone have the burden of

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proof in demonstrating that conditions have changed since the original zoning; (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare. *Parkridge v. Seattle*, 89 Wn. 2d 454, 462, 573, P.2d 359 (1978).

*Bjarnson v. Kitsap County*, 78 Wn. App. 840, 845, 899 P.2d 1290 (1995). *Bjarnson* also lists the key criteria to be applied:

In applying the changed circumstances test courts have looked at a variety of factors, including: changed public opinion, changes in land use patterns in the area of the rezone, and changes on the property itself.

78 Wn. App. at 846-847. See also *Citizens for Mount Vernon v. City of Mount Vernon* 133 Wn. 2d 861, 875, 947 P.2d 1208 (1997). See *Friends of the Law v. King County*, 123 Wn. 2d 518, 529, 869 P.2d 1056 (1994) ("The applicant bears the burden of complying fully with applicable land use requirements. *Taylor v. Stevens Cy.*, 111 Wn. 2d 159, 169-70, 759 P.2d 447 (1988).")

In applying these factors here, it is clear that there are no changed circumstances.

1) PUBLIC OPINION. Public opinion has strongly changed since 1996 in favor of retaining, not eliminating, the R-1 zone in this area. The numerous comments on the EIS (substantially all in support of retaining the R-1 zone) as well as the attendance at the public hearings on the two rezones essentially indicate no public support for the proposed rezone.

2) CHANGES IN LAND USE PATTERNS. There has been no change in land use in the local area. As described in materials submitted, the Wellington neighborhood has a long established pattern of larger lot, single family residential uses. The neighborhood consists of subdivisions developed over several years and demonstrates a very stable use for at least the past 20-30 years. This is true as well for the adjacent land uses in all directions.

What has changed in the city is that it is clearly meeting its obligations for

