

Mike Botwin on FDIC

The following letter was sent to FDIC attorney Miller and FDIC Case Manager Evans by Bellingham resident and former Deputy Attorney General for the California Dept of Justice, Michael Botwin:

Dear Mr. Miller and Mr. Evans,

I am a Bellingham resident and I am sending this e-mail to urge the FDIC to take action against Horizon Bank for its violation of the 1994 FDIC order. That order permits Horizon Bank, through its wholly owned subsidiary (Westward Financial Services Corp.), to engage in certain types of real estate development activities provided those activities are limited to “the development of real estate intended for single-family residential use” and its “aggregate investment in the activity at any one time [does] not exceed 25% of its Tier 1 capital.” (See FDIC Order, ¶¶ 2 and 3.) I believe Horizon Bank has arrogantly and defiantly violated both those provisions in regard to its development of Fairhaven Highlands.

As you know, Fairhaven Highlands (also known as Chuckanut Ridge) was purchased in 2005 by Westward Financial Services Corp. as part of a joint venture with Greenbriar Northwest LLC (hereinafter “Greenbriar”). Horizon Bank never intended to comply with the FDIC order in regard to Fairhaven Highlands by limiting it to single-family dwellings. On April 18, 2005, Greenbriar filed Subdivision Variance Application and a SEPA Environmental Checklist with the Bellingham Planning and Community Development Department (hereinafter “Planning Department”). The Variance Application described the project as “Residential - Multiple Planned.” (See Variance Application, ¶ 8.) The SEPA application contained more detail and described the project as follows:

“THE OVERALL PROJECT COVERS SOME 85 ACRES. THE 739 ALLOWABLE RESIDENTIAL UNITS WILL BE SINGLE DETACHED, COMMON WALL, TOWNHOUSE, TRIPLEX, NINE-PLEX, AND MEDUM-RISE BUILDINGS ARE PLANNED. [SEPA Application, p. 2, ¶ 16.] . . . THERE ARE SEVERAL 8-10 STORY BUILDINGS WITHIN THE CURRENT PLAN FOR THE DEVELOPMENT. [SEPA Application, p. 9, ¶ 9(a).] “

Copies of these two documents can be viewed on the City of Bellingham’s official web page at www.cob.org/government/departments/pcd/fairhaven-highlands/index.aspx under the topic “Applications.” It seems to me that Horizon Bank intended to violate FDIC’s order from the initiation of the Fairhaven Highlands

project and never intended to limit it to “single-family residential use” as required by the order.

The Fairhaven Highlands project caused public outrage from the start. Horizon Bank’s and Greenbriar’s in-your-face attitude exacerbated the public’s resentment over the project. At a meeting with approximately 500 local residents, David Edelstein stated, “We bought density” when explaining how Horizon Bank and Greenbriar intended to replace the forested mountain that frames the southern border of Bellingham with 10-story high-rises and with other multi-story buildings.

Signs containing statements such as “Stop Horizon Bank from Destroying Chuckanut Ridge” started appearing throughout the South side of town. Residents organized. Responsible Development, a non-profit corporation, was created to fight the development. (See www.rdnw.org.) RD hired a prominent Seattle land-use attorney to fight the project and has already spent over \$40,000 in fighting Horizon Bank’s project. More recently, another group (Friends of Chuckanut) also joined the fight against Fairhaven Highlands.

The Fairhaven Highlands development is described as one of the “Top Issues” on the City of Bellingham’s website. The city acknowledges that the Fairhaven Highlands “proposal has provoked significant community debate. Many area residents are opposed to developing Chuckanut Ridge, which is one of the last large, wooded properties remaining within City limits. They say they prefer to see it preserved for open space or recreational use, they are concerned about protecting sensitive environmental features, and they are concerned about traffic and other neighborhood impacts.” (See www.cob.org/issues/fairhaven-highlands.aspx.)

On September 29, 2009, the Draft Environmental Impact Study of this parcel was finally released by the City. (Note that Greenbriar is responsible for paying for this report, which exceeds 560 pages.) A local newspaper, The Bellingham Herald headlined this issue, reporting that the Fairhaven Highlands project “is the most controversial one inside city limits in recent memory.” (To read the full DEIS online, see www.cob.org and click on “Fairhaven Highlands” under “Top Issues”)

Patrice Clark, a member of a prominent Bellingham family that donated a sizable parcel of waterfront land to a land trust for the public benefit, terminated her sizable business dealings with Horizon Bank in protest to the Fairhaven Highlands project. In her October 24, 2007 letter to Horizon Bank, she states the following:

“I shared my concerns about Horizon Bank’s involvement with the Chuckanut Ridge development. I was hoping to hear that your bank would decide that developing this land was not in the bank’s best interest and that you would want to be seen in this community as a “good neighbor” and sell to the city of Bellingham, reinvesting in other properties that would not encourage sprawl as this development would do. Unfortunately, you did not see it that way . . . [¶] There still is time to rethink your bank’s investment. I hope you and your board members will seriously reconsider your option to partner with the city of Bellingham to find a way to finance transfer of this ‘gem’ to public ownership and preservation.” (See www.rdnw.org/Documents/Patrice%20Clark%20Horizon%20Bank%20letter.pdf.)

Other customers also cancelled their accounts with Horizon Bank for similar reasons.

Each year, local residents picket Horizon Bank’s Shareholders’ Meeting in protest. Some residents even purchased 1 share of Horizon Bank stock so they could attend the annual shareholders’ meeting. It was reported that during its July 21, 2009 meeting, Lawrence Evans and Richard Jacobson (Chairman and President, respectively) claimed Horizon Bank was in compliance with the 1994 FDIC order and furthermore, the FDIC did not care about compliance with its order.

Equally disturbing is the bank’s failure to limit its investment in real estate developments to no more than 25% of its Tier 1 capital and then misrepresenting its financial status to shareholders. Horizon Bank’s investment in its real estate developments is substantially more than twice limit imposed by the FDIC. Worse yet, the bank’s President purportedly misrepresented the bank’s financial status to shareholders at the last shareholders’ meeting. He allegedly stated that the bank had only invested \$18 million in the Fairhaven Highlands project instead of the \$27.2 million it had actually invested and that the Bank had \$90 million in Tier 1 capital instead of the \$45.3 million it actually had. In fact, the Bank had lost 50% of its Tier 1 equity in 3 months! It is my understanding that the purpose of a community bank is to serve the needs of the community and not to deceive it or destroy one of its ecological gems.

Many Bellingham residents have expended substantial time and money to fight Horizon Bank’s Fairhaven Highlands project in order to preserve a unique parcel of land that is a big part of Bellingham’s character. Among them, Dr. John McLaughlin, a professor of Environmental Science at Western Washington University, explained in numerous letters how the proposed Fairhaven Highlands

project would be devastating to the local environment and how preservation of that property offers a unique educational opportunity to grade schools and to the university. It is the only parcel of land in the country within walking distance of schools and the university wherein field environmental training can be provided. (See www.rdnw.org/reports.htm)

I have been a Deputy Attorney General for the California Department of Justice for around 34 years until my retirement in 2003, at which time I moved to Bellingham. I enforced California's consumer protection and white collar crime statutes during most of my tenure. I prosecuted numerous cases at the request of various state, local, and, on occasion, federal agencies. I strongly believe it is important for agencies to enforce their orders. The failure to do so results in the lack of public confidence in the agency and a lack of respect of those who are regulated. It promotes lawlessness rather than compliance and deterrence.

The Draft Environmental Impact Study has been completed and the period for public comment is ticking. Now is the time for the FDIC to act and enforce its order. Its failure to do so will cause numerous members of the public and public agencies to spend countless hours evaluating the 500+ page report and commenting upon it. All this time, effort, and expense will be wasted if the FDIC ultimately intends to prohibit the proposed multi-unit project.

Sincerely,

Michael Botwin