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January 31, 2013

**VIA HAND DELIVERY**

Mr. Bill Fruhling  
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215 Martin Luther King, Jr. Blvd.  
PO Box 2985  
Madison, WI 53701-2985

**VIA HAND DELIVERY**

Mr. Matt Tucker  
Madison Municipal Bldg., Suite LL.100  
215 Martin Luther King, Jr. Blvd.  
PO Box 2985  
Madison, WI 53701-2985

RE: Whitcomb Village Association/Pacific Cycle

Dear Mr. Fruhling and Mr. Tucker:

I hope you are well. I am writing with regard to our client, the Whitcomb Village Association ("Whitcomb"). Whitcomb is a condominium association located on Whitcomb Circle, off Hammersley Road in the City of Madison. Whitcomb's land is contiguous to the Pacific Cycle property. As you may know, Pacific Cycle is seeking to acquire and rezone a residential property located at 4908 Hammersely Road, from R1 Single Family to C2.

My client and the condominium unit owners have raised several concerns about the proposed rezoning and redevelopment of this residential property. Their concerns include the following:

1. While certainly, the City of Madison is free to regulate and restrict buildings for many reasons, including the promotion of health, safety, morals and the general welfare of the community, the Wisconsin Supreme Court has indicated that an individual parcel of land cannot be rezoned simply for its highest financial use. See *Buhler v. Racine County*, 33 Wis. 2d 137, 147 N.W.2d 403 (1976). It is our belief that the planned rezone for expansion of the Pacific Cycle would be simply for an increase in financial revenues, and provide no other benefit to the community. It will, however, severely impact the rights and interests of the neighbors.

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2. Similarly, adoption of a rezone must be found to be in the public interest, and not solely in the interest of the applicant. See *Madison General Ordinance Section 28.12(10)(f)*. We are concerned that the intended rezone is intended exclusively for the financial gain of Pacific Cycle, and gives no consideration to its immediate neighbors.
3. To the best of my knowledge, until very recently, neither Whitcomb nor the Whitcomb unit owners have been directly notified of the plan to rezone. One of the condominium owners saw a notice by virtue of his involvement with the neighborhood association, and not because of ownership or interest in the Association. We are wondering why Pacific Cycle has made no effort to reach out to those who will be most impacted by their desired expansion.
4. The rezone must not be allowed without due recognition of the master plan of the City of Madison. See *Madison General Ordinance Section 28.12(10)(f)*. In this case, the City of Madison's long term plan assumes this parcel will remain residential in nature. The residential lot is surrounded on all sides, but one, by residential properties. An expansion of the commercial zoning deeper into this residential neighborhood would be detrimental to the neighbors and the City as a whole. Pacific Cycle's planned use is not compatible with the neighbors and the rezone is not compliant with the City's master plan.
5. As set forth in *Step Now Citizens Group v. Utica Planning and Zoning Committee*, 264 Wis. 2d 662, 663 N.W.2d 833 (Ct. App. 2003), the Plan Commission and Common Council are asked to inquire into whether or not the rezone application is consistent with the long range planning of the City, as well as considerations which affect the whole community, the nature and character of the parcel, the use of the surrounding land and the overall scheme or zoning plan. The City must also consider the interest of the public health, morals and safety, as well as the promotion of public welfare, convenience and general prosperity. With the exception of Pacific Cycle, the rezone is of no benefit to the surrounding properties, and in fact, will be extremely disruptive to my clients. The residents of Whitcomb are residential property owners, living in condominium units. The expansion of the existing two story structure in a space which is intended to remain occupied by a small home, will have a significant impact on their property values and enjoyment of their properties. Currently, several of the unit owners' view to the East is a view of the wall of a twenty foot commercial building. With this proposal, several of the unit owners will be facing a 20 foot wall on more than one exterior side of their units. For some this would replace or block their now peaceful, wooded, residential back yards.
6. Perhaps most importantly, the Association holds an easement across the current property line between the existing Pacific Cycle property and the property that they wish to rezone. The easement is for sanitary connection as well as for

pedestrian access to Hammersley Road. Despite Iconica's statement (attached hereto as Exhibit 1) that "easements are currently being negotiated and drafted for the relocation of sanitary, telecommunications and site access with the neighboring condominium association," there have been no such negotiations or drafting. Neither the association nor the unit owners were even contacted by the applicant. Following inquiries by one of the unit owners, Mr. Chris Horunig did respond with an email to one unit owner, but other than that, no effort has been made to discuss or address the concerns of Whitcomb or its owners. This easement is an important right to the Whitcomb owners, and one that cannot be extinguished in the context of a rezone application. A copy of the easement is attached hereto for your reference as Exhibit 2.

7. I have been in contact with Marilyn Barbian, who owns the property located at 4912 Hammersley Road, immediately to the West of the property that is proposed to be rezoned from R1 and C2. I do not represent Ms. Barbian, but she too has raised concerns about the proposed development, including her plan to retire in this house, and her concern about the impact Pacific's expansion will have on her property.
8. Under the proposed plan, there will be a very short distance from the property line to the newly proposed building, approximately 10 feet. This is an extreme concern to my clients for the reasons set forth above, and also because, presumably, the sanitary connection will need to be re-engineered to go around the intended new structure. Forgetting for a moment how this can be done from an engineering perspective, this is going to require the devotion of significant space for the relocation and future maintenance of the sanitary pipes. What impact will this development have on Whitcomb's landscaping, trees and shrubbery presently and in the future? Considering the height of the building, the proposed buffer between the residential properties and commercial of 10 feet is insufficient.

Despite the above, my client does not wish to stand rigidly in the way of positive development. In the past, Pacific Cycle has been a good neighbor and we wish them well. However, we do not wish them well at our expense.

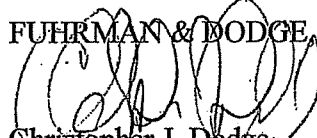
We have collected the enclosed Protest Petitions which are being filed with the City Clerk today. One Petition is on behalf of the owners (as well as the board and officers of the Association) of land immediately adjacent to the proposed development. The second is on behalf of the registered electors residing within a building located on land adjacent to the proposed rezoned property, and the third is an Owners' Petition signed by Marilyn Barbian, owner of the property at 4912 Hammersley Road. At a minimum, we respectfully ask that this rezone application be tabled to allow the parties time to meet, and hopefully reach an agreement that can address the concerns of my clients.

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Thank you for your attention to this matter.

Very Truly Yours,

FUHRMAN & DODGE S.C.



Christopher J. Dodge  
*Attorney at Law*

CJD/mjp  
Enclosure

cc: Whitcomb Village Association  
ATTN: John Caputo