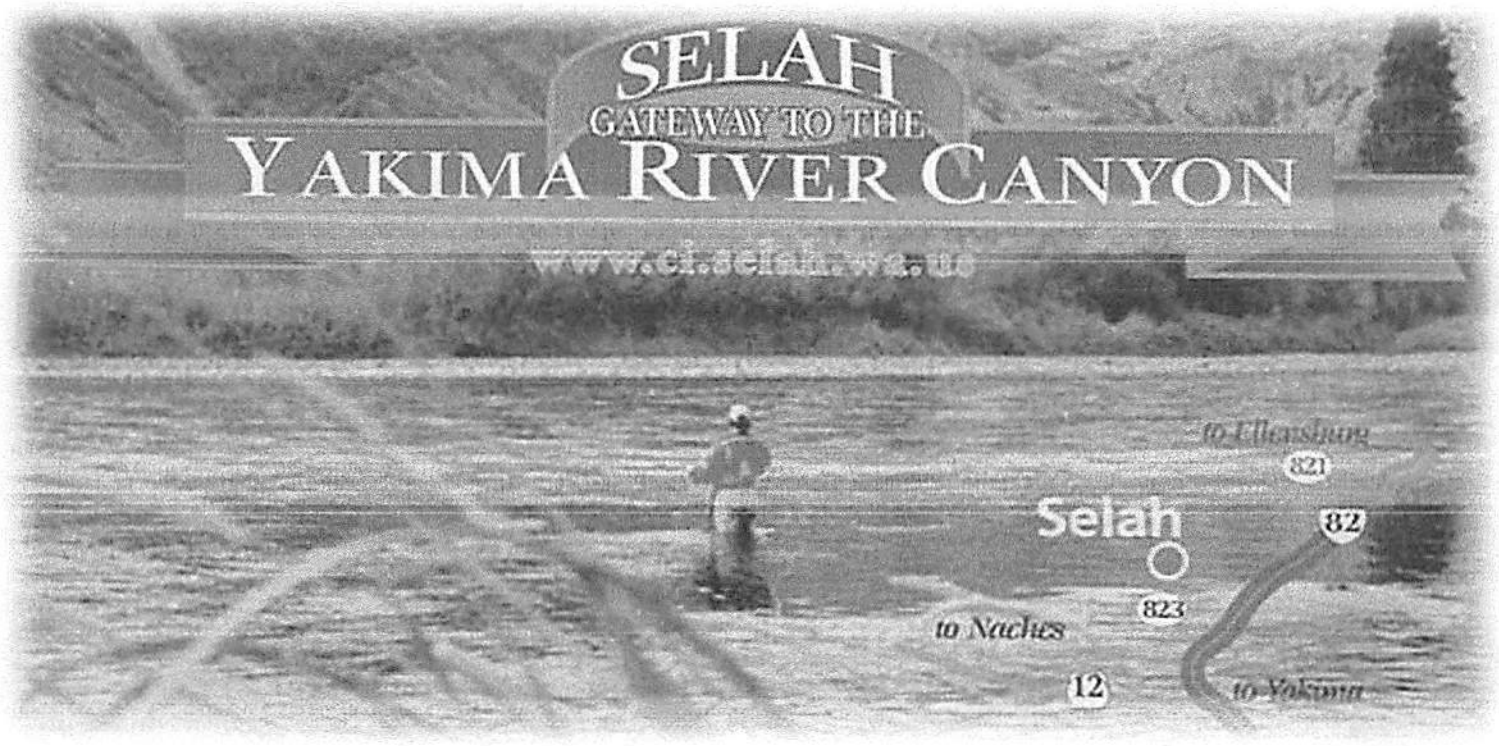

SELAH CITY COUNCIL

6:30pm August 25, 2015

Selah City Council
Regular Meeting
Tuesday, August 25, 2015
6:30pm
City Council Chambers

Mayor:	John Gawlik
Mayor Pro Tem:	Paul Overby
Council Members:	John Tierney
	Dave Smeback
	Allen Schmid
	Roy Sample
	Jane Williams
	Laura Ritchie

CITY OF SELAH
115 West Naches Avenue
Selah, Washington 98942

City Administrator:	Don Wayman
City Attorney:	Bob Noe
Clerk/Treasurer:	Dale Novobielski

AGENDA

A. Call to Order –Mayor Gawlik

B. Roll Call

C. Pledge of Allegiance

Q. Executive Session - relocated

1. 30 Minute Session – Potential Litigation RCW 42.30.110 (1) (i)

D. Agenda Changes **None**

E. Public Appearances/Introductions/Presentations **None**

F. Getting To Know Our Businesses **None**

G. Communications

1. Oral

This is a public meeting. If you wish to address the Council concerning any matter that is not on the agenda, you may do so now. Please come forward to the podium, stating your name for the record. The Mayor reserves the right to place a time limit on each person asking to be heard.

2. Written

Andrew Potter a. Selah Downtown Association Monthly Report

H. Proclamations/Announcements

Mayor Gawlik 1. Proclamation of Kiwanis Day

I. Consent Agenda

All items listed with an asterisk (*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

Monica Lake * 1. Approval of Minutes: August 11, 2015 Council Meeting
Dale N. * 2. Approval of Claims & Payroll

J. Public Hearings

Andrew Potter 1. Public Hearing to Consider the Resolution Adopting the Selah Transit Development Plan, including the Annual Report for 2014 and Six-Year Plan 2015-2020

K. New Business **None**

L. Old Business **None**

M. Resolutions

Tom Durant	1.	Resolution Upholding City Administrator decision approving Class 2 Use for six unit multiple family dwelling (926.45.15-02)
Andrew Potter	2.	Resolution adopting the Selah Transit Development Plan, including the annual report for 2014 and six-year Plan 2015-2020
Joe Henne	3.	Resolution Authorizing the Mayor to sign Amendment #1 to the Professional Service Agreement with the Yakima Valley Conference of Governments (YVCOG) For Professional Services to update the City Growth Management Act (GMA) Comprehensive Plan
Tom Durant	4.	Resolution Approving the Preliminary Plat of "Whispering Views Estates" (912.45.14-02) and Adopting Findings and Conditions of Preliminary Plat Approval

N. Ordinances

Tom Durant	1.	Ordinance Amending Ordinance No. 1634 Zoning Map Amendment No. 914.45.14-01 Rezone to Planned Development
Dale N.	2.	Ordinance Amending the 2015 Budget for the Replacement of Carpet at City Hall.

P. Reports/Announcements

1. Mayor
2. Council Members
3. Departmental
4. Boards

Caprise Groo a. Planning Commission Minutes – August 4, 2015

Q. Executive Session RELOCATED

R. Adjournment

Next Study Session	August 25, 2015
Next Regular Meeting	August 25, 2015

Each item on the Council Agenda is covered by an Agenda Item Sheet (AIS)

A yellow AIS indicates an action item.
A blue AIS indicates an information/non-action item.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **INFORMATIONAL ITEM**

8/25/2015 **G – 2A**

Title: Selah Downtown Association Monthly Report

Thru: Donald Wayman, City Administrator

From: Andrew Potter, Assistant to the City Administrator

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Informational Only

Background / Findings & Facts:

Attached is the Treasurer's Report given at the most recent SDA meeting held on 8/10/2015.

Recommended Motion:

N/A

Selah Downtown Association
Treasurer Report
8/10/15

INCOME	
Beg. Balance	$23,239.84
Voided checks from the (Art Event)	$450.00
Triathlon event	$25.00
Total Income	**$23714.84**
EXPENSES	
Art Show Expenses	$308.00
Brand Unveiling Expenses	$191.39
Triathlon Expenses	$148.23
Postage and Supplies	$69.27
Leadership Training Meeting	$350.68
Branding Expense	$20,599.26
Membership renewal for Chamber of Comm.	$50.00
Total Expenses	**$21,716.83**
CURRENT BALANCE ON HAND	**$1998.01**

Tammy E. Allan, Treasurer SDA

8/10/15
Date

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **INFORMATIONAL ITEM**

8/25/2015 **H – 1**

Title: Proclamation of Kiwanis Day

Thru: Donald Wayman, City Administrator

From: John Gawlik, Mayor

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

N/A

Background / Findings & Facts:

The local chapter of Kiwanis is very active, devoted to the children of our community, and the City wishes to recognize them for their efforts.

Recommended Motion:

N/A

Kiwanis

www.kiwanis.org

Proclamation of Kiwanis Day

Whereas: Kiwanis International is one of the largest service organizations in the world with more than 600,000 members of all ages and abilities in more than 80 nations; and

Whereas: The members of the Kiwanis club of Selah will be joining the Kiwanis clubs of Apple Valley, Kamiakin, West Valley, Downtown Yakima, Goldendale, Prosser, Grandview, Rodeo City Sunnyside, Ellensburg, and Cle Elum in celebration of service to their communities; and

Whereas: All Kiwanis members are devoted to improving lives and changing our communities one child at a time; and

Whereas: In addition Kiwanis members promote the development of community leaders, positive role models, intercultural understanding and cooperation, and opportunities for fellowship, personal growth, professional development and community service; and

Whereas: The first Kiwanis club started its service in Detroit, Michigan, USA, in 1915 and is this year celebrating its Centennial Anniversary of community service; and

Whereas: The service provided by the area Kiwanis clubs will continue to have a positive impact on our community and citizens; and

Therefore: I, John Gawlik, Selah Mayor, do hereby proclaim this September 12, 2015 as Kiwanis International Day, and hereby call upon all citizens and officials of Selah therefore to render support to the members of this organization, join in a regional celebration at Yakima Kiwanis Park and to make themselves aware of Kiwanis International, whose members this day are providing meaningful service to our homes, schools and communities.

In witness thereof: I have hereunto set my hand and caused the seal of Selah to be affixed, on this, the 12th day of September, 2015

John Gawlik
Selah Mayor

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING	ACTION ITEM
8/25/2015	I – 1

Title: Approval of Minutes: August 11, 2015 Council Meeting

Thru: Donald Wayman, City Administrator

From: Monica Lake, Executive Assistant

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Approval of Minutes

Background / Findings & Facts:

See Minutes for details

Recommended Motion:

Motion to approve the Consent Agenda as read. (This item is part of the Consent Agenda)

City of Selah
Council Minutes
July 28, 2015

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. Call to Order — Mayor Gawlik called the meeting to order at 6:30pm.

B. Roll Call

Members Present: Paul Overby; John Tierney; Roy Sample; Jane Williams; Laura Ritchie

Members Excused: Dave Smeback; Allen Schmid

Staff Present: Don Wayman, City Administrator; Bob Noe, City Attorney; Gary Hanna, Fire Chief; Rick Hayes, Police Chief; Joe Henne, Public Works Director; Dale Novobielski, Clerk/Treasurer; Charles Brown, Recreation Manager; Tom Durant, Community Planner; Andrew Potter, Assistant to the City Administrator; Monica Lake, Executive Assistant

C. Pledge of Allegiance

Council Member Tierney led the Pledge of Allegiance. Pastor Charles Bonner gave the prayer.

D. Agenda Changes

Remove from Agenda:

1. Executive Session P – 1: 30 Minute Session – Real Estate RCW 42.30.110(1)(b)

E. Public Appearances/Introductions/ Presentations **None**

F. Getting To Know Our Businesses **None**

G. Communications

1. Oral

Mayor Gawlik opened the meeting.

Wayne Worby approached the podium and addressed the Council. He said that he wished to address Council concerning Chapter 10.24 of the Selah Municipal Code, such as how to write it correctly, the need for comments from the public, and to have as much information available as one can get before sitting down to write policy. He expressed his concern that the rewrite may be worse than what the City had in place, particularly the portion that allows for an appeal of any portion of the Code. He questioned the use of 'may' in the Code, feeling that 'shall' allows for more control, and wondered if surveys or information from citizens were being used to instruct and guide those making the policy. He asked where the input is from the elected officials of Selah.

Council Member Williams responded that they will have the opportunity for input when the matter comes before them.

Mr. Worby commented that there no wish list and no data from the people.

Council Member Sample remarked that he heard him make this same argument with the Planning Commission, and felt that everything has already been said. ,

Mr. Worby stated that there would be no context without being there, and that they will miss the flavor of it if they rely only on transcripts. He noted that 10.24 is not a WAC code requirement.

Council Member Tierney replied that they rely on the data and information that the Planning Commission receives to build a recommended Ordinance, and that every Council Member will have the opportunity prior to the Council Meeting to fully review and make a determination in their own minds regarding what action to take. He felt it would almost be biasing his opinion if he provided input to the Planning Commission on a particular piece of subject matter, and that it is up to the public to attend Planning Commission meetings and express their thoughts on the subject. He noted that he hasn't had a single person approach him about anything relating to 10.24.

Mr. Worby didn't think the people in the community know what is going on related to this. He suggested having town hall meetings.

Council Member Tierney responded that there is a general lack of involvement in the community when it comes to these matters, as the number who would attend would be a small section of the population.

Mr. Worby felt that the City wasn't doing enough groundwork regarding new legislation.

Council Member Overby observed that, as a Council Member, he often receives input on things that are not appropriate to receive, as they have to maintain a non-biased approach. He said that it's a legislative action and everyone has an opinion about what it should be. He stated that the Council Members are all open to receiving input personally or in a public forum. He remarked that he listened to six hours of Hearing Examiner and Planning Commission meetings recently as part of the information provided to Council, and that he prefers that the Planning Commission and Hearing Examiner distill the meetings down to the barest essentials for Council, as he doesn't want to be in the position of listening to hours of meetings again.

Mr. Worby replied that he was making the best decision possible because he was informed.

Council Member Overby responded that he cannot consider opinions, emotions, or flavor in a quasi-judicial decision, adding that a lot of that does establish context but they need to consider the facts and the law. He is content with the duly delegated entities delivering the facts.

Mr. Worby said that he understands that.

Council Member Overby commented that there is always opportunity for input, and that he has discussed 10.24 with City Administrator Wayman. He felt that how people feel about the matter is incredibly important.

Council Member Ritchie said that it's posted on the City website, and encouraged people to review and comment on it. She asked how long it's open for comment.

City Administrator Wayman replied that the Planning Commission meets next Tuesday for a study session, with no public comment at that point, but they will take written comment and consolidate public comment on the matter, then direct himself and Community Planner Durant as to what to put into the new Ordinance. He stated that the will have an open hearing on the final draft at the following Commission meeting, and that he will be asking for an additional thirty days to allow for time to complete the rewrite with the appropriate amount of public comment. He noted that they have had a lot of suggestions, and that there will be a number of changes from the original to the final draft.

Council Member Ritchie remarked that she has talked with City Administrator Wayman about generating public comment, feeling that a lot of residents either don't know, don't care, or are too busy. She felt that it's up to those people who are interacting currently to seek out others.

Mr. Worby commented that they could create a survey, create feedback for discussion, and have a group get together at community center, similar to what was done for the pool project.

Council Member Sample replied that the SPRSA is a separate organization from the City of Selah, and that they represent all of the Selah School District. He noted that the survey that was up on the website was for an opinion of what the pool configuration should be, which is different from the type of Survey Mr. Worby is talking about. He didn't see the relevance for a survey.

Mr. Worby felt that both pertain to quality of life for Selah.

Council Member Overby stated that 10.24 is a large item to consider, and that even the development of a survey would be contentious, as it would lead to highlighting certain issues and ignoring others.

Council Member Williams didn't think Council needed to be in a rush because this is a big issue.

Mayor Gawlik remarked that, per citizen comments regarding the repealed Planned Development Code, Council opted to remove it and give the Planning Commission and a land use law firm ninety days to start the process on that segment of Chapter 10. He noted that there was a request for a sub-committee, but the City has the Planning Commission for those matters, which is comprised of people from the community. He noted that City Administrator Wayman mapped out the process and a timeline, but due to

no community feedback and a delay from the law firm they have fallen behind on the rewrite. He stated that this is being taken very seriously, and that they have tried to be as open as possible during the entire process.

Mr. Worby felt that input will be very narrow in terms of community involvement, which is why he's suggesting a town hall meeting.

Mayor Gawlik responded that the Planning Commission is meeting twice a month.

Mr. Worby felt he was missing the point, suggesting that the City put an announcement on utility bills to get a broader base of support for it.

City Administrator Wayman remarked that it's a matter of perspective, and that he thinks the Planning Commission is taking extraordinary measures with two meeting on the issue. He noted that there will be opportunity for another week of written comment, and that the next meeting is a study session.

Mayor Gawlik wondered if the study session could be held as an open forum down at the Civic Center.

City Administrator Wayman believed that the best venue was at City Hall, and that he and Community Planner Durant will be receiving their marching orders from the Commission for the final draft, then have an open hearing at the next meeting.

Mayor Gawlik asked for clarification that there would be two more meetings.

City Administrator Wayman responded in the affirmative.

Mayor Gawlik wondered if the study session could be announced as an open forum.

Community Planner Durant said it will be put on website again, and can be put on the reader boards.

Mr. Worby asked about the Yakima Herald having a reporter come, as the website is great for those who go to it, but not everyone does.

City Administrator Wayman stated that the next Planning Commission meeting is a regularly scheduled one at 5:30 pm, and that they will not be taking public comment unless the Chairman changes his mind.

Mayor Gawlik remarked that the City has been doing its due diligence.

Mr. Worby responded that he is looking for ways to get more people engaged, and that the last meeting was a great meeting with a lot of discussion. He said that there's a bigger group of people who need to become aware of how big it is and how important it is.

Council Member Tierney commented that there was a pathetic turnout of voters in the last election.

Seeing no one else rise to speak, Mayor Gawlik closed the meeting.

2. Written

a. July 2015 Monthly Report for Building Permits and Inspections, Animal Control and Code Enforcement

b. Letter from Department of Ecology re: 2014 'Wastewater Treatment Plant Outstanding Performance' award to City of Selah Wastewater Treatment Plant

Mayor Gawlik thanked the Wastewater Treatment Plant crew for their diligence in making sure the water systems are clean before they go back out, and congratulated the for their hard work and recognition from the State.

H. Proclamations/Announcements **None**

I. Consent Agenda

Council Member Williams moved, and Council Member Tierney seconded, to add M – 4 to the Consent Agenda. By voice vote, approval was unanimous.

Council Member Overby moved, and Council Member Williams seconded, to add N – 1 to the Consent Agenda. By voice vote, approval was unanimous.

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

* 1. Approval of Minutes: July 28, 2015 Council Meeting

* 2. Approval of Claims & Payroll:

Payroll Checks Nos. 78818 – 78863 for a total of $257,304.93
Claim Checks Nos. 66211 – 66284 for a total of $123,439.63

* 3. Resolution M – 1: Resolution Authorizing the Mayor to Sign a Professional Service Agreement with the Yakima Valley Sports Commission

* 4. Resolution M – 3: Resolution establishing August 25, 2015 as the public hearing date to consider the adoption of the "Selah Transit Development Plan"

* 5. Resolution M – 4: Resolution Authorizing the Mayor to sign a letter to confirm continuing commitment to Project Match for the Valleyview Avenue/South Third Street/Southern Avenue Project's Right of Way and Construction phases.

Council Member Overby moved, and Council Member Sample seconded, to approve the Consent Agenda as read. By voice vote, approval of the Consent Agenda was unanimous.

J. Public Hearings **None**

K. New Business

1. Carpet Installation Throughout City Hall

Assistant to the City Administrator Potter addressed K – 1. He said that he consulted with two local businesses for quotes to replace the carpet, and that Custom Tile Works came in approximately two thousand dollars lower than the other business. He noted that the price requested is more than the quote as the quote didn't include sales tax. He noted that the Public Works Department has been painting portions of City Hall as well, and that this will create a clean and safe office for the public and employees.

Council Member Tierney remarked that he assumes the line for tearing out carpet from the existing courtroom refers to the old one.

Assistant to the City Administrator Potter responded in the affirmative, saying that it will be turned into a conference room.

Council Member Overby commented that it's long overdue, and he's glad to see it happening.

Council Member Tierney moved, and Council Member Overby seconded, to approve the purchase and installation of new carpet throughout City Hall. Roll was called: Council Member Overby – yes; Council Member Tierney – yes; Council Member Sample – yes; Council Member Williams – yes; Council Member Ritchie – yes. By voice vote, approval was unanimous.

L. Old Business

1. Extension of Municipal Code 10.24 Rewrite

City Administrator Wayman addressed L – 1. He said that, as discussed earlier, they are working diligently on the write, but the timeline has been extended by necessity, primarily due to a need for extended public comment. He recommended sixty days instead of his original request for thirty days, to allow for ample time for Council to review the matter after the Planning Commission has completed their final draft.

Council Member Overby asked if there was a statutory obligation to do in a certain amount of time.

City Attorney Noe replied in the negative, adding that the time limit was something Council wanted.

City Administrator Wayman restated that he would like to amend his request of an additional thirty days to sixty days' extension.

Council Member Overby wondered if they have an obligation to have a Planned Development provision at all.

City Attorney Noe responded that there is no legal requirement to have it.

Council Member Ritchie wondered if the repeal has impacted builders and developers.

Mayor Gawlik replied that anything on the desk when the chapter was repealed will still be considered, but nothing new will be un the new chapter is adopted.

City Administrator Wayman noted that there are no new applications pending.

Community Planner Durant remarked that there is one vested project still out there.

Council Member Tierney moved, and Council Member Overby seconded, to extend the deadline for the Municipal Code 10.24 Rewrite for an additional sixty (60) days. Roll was called: Council Member Overby –yes; Council Member Tierney – yes; Council Member Sample – yes; Council Member Williams – yes; Council Member Ritchie – yes. By voice vote, approval was unanimous.

M. Resolutions

* 1. Resolution Authorizing the Mayor to Sign a Professional Service Agreement with the Yakima Valley Sports Commission

2. Resolution Approving the Preliminary Plat of "Somerset II" (912.42.15-02) and Adopting Findings and Conditions of Preliminary Plat Approval

Council Member Sample recused himself, taking a seat in the audience during the discussion of Resolution M – 2.

Community Planner Durant addressed M – 2. He said that there is some question as to whether the copy of the staff report with handwritten notes is part of record.

City Attorney Noe remarked that it was brought to his attention that the version posted on the website includes a section with handwritten notes, which was not part of the record presented to the Hearing Examiner.

Community Planner Durant spoke briefly about the plat itself, and the Hearing Examiner's recommendation to approve the plat with twenty-five conditions and have the private road be constructed to City standards. He said that staff is recommending approval with the conditions, but making changes to the private road as proposed. He noted that the Hearing Examiner had erroneously numbered two conditions as number nine, which was corrected on the Resolution.

Council Member Overby asked where he was referring to the recommendation of City standards.

Community Planner Durant responded that it's at the bottom of page eighteen of the Hearing Examiner's recommendation, reading aloud the specific section referring to the private access road.

Council Member Overby questioned if it was a recommendation or a condition.

Community Planner Durant responded that condition ten approved a private road with additional verbiage, but the second recommendation was to have the road meet the same standard as a public street.

Council Member Tierney inquired what standards the road would be built to if not those of public streets, as he doesn't want a developer to lay down a substandard base for that piece of roadway. He felt that it should be the same standards as a public street.

Community Planner Durant replied that the standard is in the International Fire Code.

Council Member Tierney remarked that it only pertains to width and turnaround, not the base and surface material, and a heavy vehicle could damage the road.

Fire Chief Hanna stated that the Fire Code refers back to local jurisdictions and doesn't actually call out thickness for roads, although it does mention carrying a certain weight load.

Public Works Director Henne commented that this came up because a standard roadway has a fifty foot right of way and this proposal was for a twenty foot road; the Hearing Examiner was referring to development standards, but the City has none for private roads aside from the Fire Code requirements.

Mayor Gawlik asked about compaction at the base.

Public Works Director Henne responded that they can require it to conform with development standards regarding compaction, gravel, and asphalt types.

Council Member Tierney expressed his desire to see it built to the same strength standards as City streets require, adding that his main concern is reliability and the ability of the street to withhold wear and tear of trucks.

Public Works Director Henne replied that the road will conform with the Fire Code and the City's development standards; they will impose design standards for a regular street.

Council Member Overby commented that private roads are not uncommon in Planned Developments. He wondered if there were any recent developments with a private road.

Public Works Director Henne replied that the only one he can think of was for Torkelson's subdivision off Southern Avenue. He noted that the applicant applied for a road that meets Fire Code standards.

Council Member Ritchie asked about residential street standards.

Public Works Director Henne stated that it is a fifty foot right of way, of which thirty-nine feet is the pavement width, with an eight foot parking lane, two curbs and a five foot sidewalk.

Council Member Ritchie observed that there was no plan for a sidewalk.

Public Works Director Henne said that she was correct.

Council Member Ritchie expressed concern about the road accommodating the number of cars that would access the residences as well as public safety for children walking along the road with vehicles.

Public Works Director Henne replied that Council could require a barrier curb and five foot sidewalk, splitting the right of way at thirteen and a half feet rather than ten.

Council Member Ritchie wondered if there would be any issues with lot coverage.

Community Planner Durant responded that lot coverage only includes buildings.

Council Member Ritchie asked if it covered driveways.

Public Works Director Henne replied in the negative, adding that typically roads aren't private so they have no concern about being part of the lots. He stated that this is unique as a request for a private road.

Council Member Williams wanted to know why it wasn't done as a public street to begin with.

Community Planner Durant responded that there was insufficient space to accommodate a public street, and the property doesn't lend itself to an additional tier of lots with a street between. He added that the alternative would be either bigger lots or long narrow lots, but the applicant considered this a better configuration to develop.

Council Member Williams questioned the lack of off street parking, no sidewalks, no alley standards, and the need for lots thirteen and fourteen to use the alley as well. She felt that allowing those two lots to use the private road should be stricken from the conditions.

Public Works Director Henne observed that it allows access to their rear yards.

Council Member Williams stated that no one else has that.

Community Planner Durant said that Council can restrict driveway approaches to the front on those two lots if they opt to do so.

Council Member Williams remarked that she isn't opposed to putting duplexes in the development, but she is concerned about having them in the back with only an alley for access. She would rather have them face Lyle Loop.

Public Works Director Henne reiterated that there would be a twenty foot private road.

Council Member Williams commented that there are no sidewalks and very limited parking, and that people would park on the street even with no parking signs posted. She referred to the Southern Avenue subdivision as an example.

Public Works Director Henne asked Fire Chief Hanna about the Southern Avenue subdivision regarding fire calls.

Fire Chief Hanna stated that the only calls in that development have been medical calls.

Council Member Tierney inquired if he was satisfied with the roads from a fire personnel perspective.

Fire Chief Hanna responded that the standard line is one hundred twenty-nine feet, and that the access road will be posted on both sides as no parking.

Council Member Overby wondered if the Police Department could issue tickets on a private road.

Police Chief Hayes replied in the affirmative.

Council Member Overby asked if it would be enforceable.

Public Works Director Henne responded that the code enforcement officer can issue a citation.

Council Member Ritchie inquired what would happen if they required a public street instead of a private one.

Mayor Gawlik told her that it would change the entire plat.

Council Member Ritchie wondered if he would need to go back through the entire process.

Community Planner Durant replied that he would probably have to reapply, as the City's Code doesn't allow for amending a Planned Development.

City Administrator Wayman observed that it can also be appealed in Superior Court.

Council Member Ritchie asked if code enforcement tickets would stand up in court.

City Attorney Noe responded in the affirmative, adding that it would go through municipal court as an infraction.

Council Member Ritchie inquired if her felt tickets could be issued on a private road.

City Attorney Noe replied in the affirmative, saying that the City issues infractions on private property all the time.

Council Member Ritchie asked if they've been issued for parking.

City Attorney Noe responded that he's not aware of any issued for that.

Public Works Director Henne remarked that they have been issued on private property for parking cars on grass or other issues; they are treated like any other citation but issued by code enforcement. He

noted that Fire Code states they will post 'no parking' signs on both sides, which are legally erected signs conforming with adopted code.

Council Member Tierney wondered if modifying condition ten regarding street width and design, and including a need for a sidewalk on one side, was allowed.

City Attorney Noe stated that they can choose to modify it, and that the developer can appeal if he doesn't agree with their conditions.

Community Planner Durant noted that condition ten specifically says 'subject to increased requirements imposed by Council'.

Council Member Tierney felt that it be a twenty foot street with a sidewalk, built to City standards regarding streets.

Community Planner Durant asked if he wanted a sidewalk along the entire length or just to the hammerhead.

Public Works Director Henne suggested that they bring it around to the end of the twenty foot private road.

Council Member Overby commented that the Hearing Examiner did spend a decent amount of time on the matter, and his analysis went into detail on why they don't want private roads.

Council Member Williams reiterated that there is inadequate parking for the people on those lots.

Community Planner Durant responded that there is room for two cars in each driveway plus a garage.

Council Member Williams expressed her concern that there is no overflow parking.

Community Planner Durant replied that they could park cars at the far end of lot twenty.

Council Member Tierney moved to amend recommendation number ten on the conditions of Preliminary Plat Approval to read as follows: That the private street roadway shall be constructed as a hard surface street, to specifications approved by the Public Works Director prior to the record of the final Plat. The street shall have a minimum surface width of twenty feet, and designed with a strength in compliance with that of the City of Selah's public streets, and shall include a sidewalk on at least one side.

Mayor Gawlik stated that the motion died due to lack of a second. He reminded those in attendance that this is a closed record hearing, and only those who submitted or gave testimony during the open hearing have the right to come forward to argue or rebut to the Council. He noted that they will be given five minutes each.

Roy Sample, 1304 Heritage Hills Drive, approached the podium and addressed the Council. He thanked the Hearing Examiner, Planning Commission and City Council for their work on his project, saying that

he knows how difficult this is. He stated that the idea behind this plan was due to the configuration of the land, explaining why it wouldn't work to place the duplexes where Council Member Williams has suggested. He noted that he discussed the project with Fire Chief Hanna, and that this project is similar to one on Goodlander Square, which also has private roads. He pointed out that there is additional parking right beside each driveway as well as additional spots at the end of the road and to the east. He stated that he has no problem complying with City standards as for road construction.

Council Member Williams felt he could put in a four foot sidewalk without impeding the percentage of coverage.

Mr. Sample replied that the easement doesn't come out of the area of the lot, which could make it more difficult to put in. He remarked that he has done over two hundred lots in Selah since 1980, along with others in Terrace heights and the West Valley area, which have included condominiums and commercial buildings, but none were built for rentals. He stated that he always wants to sell the units he builds.

Wayne Worby approached the podium and addressed the Council. He started off by reading a definition from 10.50 of the City's Code, saying that he doesn't feel this qualifies as a hardship per the definition of one, and that the City shouldn't roll over regarding their standards. HE referenced the Hearing Examiner's report as he talked about safety issues and the lack of information regarding traffic and pedestrian safety.

Council Member Williams wondered if the extra time could be given to those in the audience who provided written comment.

Mayor Gawlik replied that City Attorney Noe advised him to only allow those who gave testimony to come forward and make final argument.

City Attorney Noe stated that no additional testimony is allowed, and that written materials were provided in the packet.

Council Member Ritchie wondered if a twenty foot private road with curbs was required to have storm drainage.

Public Works Director Henne responded that it would drain off without a curb, but with curbs it would need storm drainage. He'd need to look at the road slope to determine if a storm drain was needed. He added that a motion similar to Council Member Tierney's would have the property inspected to see where the stormwater drained, then decide how to accommodate it.

Council Member Ritchie asked if it was something that needed to be part of the motion.

Public Works Director Henne replied that a twenty foot wide street with a curb, gutter, and sidewalk done to Fire Code and City standards would also cover storm drainage.

Council Member Overby noted that the Hearing Examiner recommended that it comply with City design standards.

Public Works Director Henne commented that that will cover it.

Council Member Overby remarked that the Hearing Examiner was referring to a thirty foot street with curb and sidewalk.

Public Works Director Henne stated that they don't have a development standard for private roads, but Council could impose the same standards regarding road integrity for public roads.

Council Member Ritchie asked if it was different because there were no design standards for private roads.

Public Works Director Henne commented that they are utilizing everything for development standards other than road width.

Community Planner Durant remarked that the Hearing Examiner's language recommended that the private access be constructed as a twenty foot access road meeting City design standards as determined by the Public Works Director.

Council Member Overby observed that the private road is easement, so it doesn't count against lot size. He felt that the Hearing Examiner seemed to be leaning towards the safety issue, and wondered if the lots would be developable if the road was designated as private but local access,

Public Works Director Henne commented that a typical traffic lane is about eleven feet wide, but the right of way is wider to provide parking on residential streets. He stated that there is no reason to be wider than twenty-two feet unless they are providing off street parking.

Council Member Overby inquired about the size if completed to City standards.

Public Works Director Henne responded that it would be a twenty-two foot road with no parking.

Council Member Overby asked for confirmation that a thirty foot width allows on street parking.

Public Works Director Henne replied that it is twenty-nine feet for a curb and sidewalk; typical travel lanes are eleven feet and turn lanes are twelve feet.

Council Member Williams wished there was an overhead map. She wondered what it would be if they went from twenty feet to thirty feet.

Public Works Director Henne responded that that going to twenty-nine feet would include a five foot sidewalk.

Council Member Williams asked if that would include the area to the north and south as well as the east and west to the hammerhead.

Public Works Director Henne replied in the affirmative.

Council Member Williams inquired about the width past the hammerhead.

Public Works Director Henne responded that it's just a gravel road.

Council Member Williams asked how wide.

Community Planner Durant said it is twenty feet.

Public Works Director Henne added that it was without a curb or sidewalk.

Council Member Williams expressed concern, feeling that the road serving the duplexes would be below City standard.

Council Member Overby commented that City standard assumes on street parking, adding that a twenty-two foot road would accommodate the back and forth traffic.

Public Works Director Henne agreed, saying that would be two standard travel lanes.

Council Member Overby stated that normal local access streets assume on street parking, and that without it the extra width isn't needed.

Public Works Director Henne noted that they would have to put up no parking signs.

Council Member Ritchie moved, and Council Member Overby seconded, to amend the second condition number nine to read: The private street roadway shall be constructed as a hard-surfaced street to specifications approved by the Public Works Director prior to recording the final plat. The entire private street shall have a minimum surface width of twenty-two feet, and shall be made in conformance to design and strength standards required of the City of Selah's residential streets, and shall include a five foot sidewalk on at least one side and a standard curb for the sidewalk.

Council Member Williams asked if that was adequate for fire trucks.

Fire Chief Hanna said that it would be the same as a twenty foot access road.

Mr. Sample said that he didn't understand the motion; currently there is an easement shown as a fire area with no parking, and that in order to put a sidewalk on one side the driving surface would be ten feet plus a curb and sidewalk, which would require sixteen feet on one side and twenty feet on the other. He asked which part of the road this applies to.

Council Member Ritchie responded that it applies to the entire private street.

Council Member Williams inquired if she also meant the easement on the east and west ends without the hash marks.

Council Member Overby requested discussion on the matter, saying that he wasn't thinking it included any more that what was designated as a private road, and that he was concerned with public safety regarding the inclusion of a sidewalk. He wondered if the private road will be paved.

Mr. Sample commented that a public road is a fifty foot right of way.

Council Member Overby responded that this would be twenty-nine feet with a curb, gutter and sidewalk.

Public Works Director Henne agreed, adding that it would change the easement from ten feet to fourteen and a half.

Council Member Overby noted that he was only envisioning the hashmarked area on the map.

Mr. Sample asked for confirmation that the areas to the east and west could remain at ten feet per side.

Council Member Overby reiterated that he was referring to the hashmarked area designated as a private road.

Council Member Tierney remarked that he doesn't like private roads, and that they pay good money to the Hearing Examiner to go through the process and make a recommendation. He read an excerpt from the Hearing Examiner's report and commented that it's appropriate that street width comply with typical design requirements.

Public Works Director Henne noted that taking the motion and moving forward complies with local development standards without parking.

Council Member Overby observed that it was originally twenty feet and has been upped to twenty-two.

Council Member Tierney felt that an additional two feet doesn't make it an additional hardship because they are dealing with an easement rather than loss of property.

Council Member Ritchie noted that there is some disagreement as to whether it applies to only the hashed area or to the entire length.

Council Member Overby made a separate motion that included the original motion but amended it to apply only to the hashed area.

Mr. Worby wondered why Council was trying to find ways to bend the rules against the standards in place when the parcel had an approved plat already. He felt that this did not qualify as a hardship and that Council and staff were working too hard to make this work for the applicant.

Council Member Overby requested that he restrain his argument, as he didn't feel it appropriate.

City Attorney Noe stated that the Hearing Examiner has made his recommendation with certain conditions, and that Council has to have a reason to deviate from his recommendations. He recommended approval as proposed.

Council Member Williams thought it gave Council leeway to decide the size and scope of the private road.

Council Member Overby commented that he sees them approving with the conditions and considering the recommendation to consider some additional width on the private road.

Council Member Williams asked for confirmation that he's saying twenty-two feet on the private access road.

Council Member Overby responded that he could live with twenty feet since they are talking about driveways at that point.

Council Member Tierney said that the motion was twenty-two feet.

Council Member Overby replied that it was on the actual private road.

Council Member Williams thought it was thirty on the private road.

Council Member Tierney said that, if he understands what they is trying to do, that they are trying to change the verbiage of condition number ten to comply with street width and such, which really in effect approves the second2nd recommendation that isn't included in proposal with the exception of street width.

Council Member Overby felt they could do so and still follow the recommendation.

Mr. Worby suggested that it go back for further consideration, as he left holes for interpretation.

Council Member Overby thought that the conversation is about the vision of what would be additional standards.

Council Member Williams requested that the entertain an addition to the motion to amend condition number thirteen to limit driveway access for lots thirteen and fourteen to Lyle Loop Road, and have the rest of the sentence stricken.

Council Member Ritchie stated that she's meant the entire road but was willing to have it only include the hashed portion if they included lot twenty as part of the area to have a sidewalk, curb, and gutter.

Council Member Williams preferred the original motion to have it continue along the full width of the road.

Council Member Ritchie moved, and Council Member Tierney seconded, to amend the Hearing Examiner's recommendation as to second condition number nine to read as follows: The private street roadway shall be constructed as a hard-surfaced street to specifications approved by the Public Works Director prior to recording the final plat. The entire private street shall have a minimum surface width of 22 feet, and shall be made in conformance to design and strength

standards required of the City of Selah's residential streets, and shall also include, in addition to the twenty-two feet of roadway surface, a five foot sidewalk on at least one side and a standard curb connecting the sidewalk; and to amend what is marked as number twelve on the Hearing Examiner's report to read: Driveway access to Lots 13 and 14 shall be limited to Lyle Loop Road, striking what follows.

Council Member Overby clarified that the motion is for about the entire road, not just the hashed area.

Council Member Ritchie read aloud her motion one more time per Mayor Gawlik's request.

Roll was called: Council Member Overby –no; Council Member Tierney – yes; Council Member Sample – recused; Council Member Williams – yes; Council Member Ritchie – yes. Motion passed with three yes votes and one no vote.

Mr. Worby expressed concern about the private street as he felt people would be illegally parking along it during times when code people aren't working.

Police Chief Hayes responded that the entire road will be a fire lane, and that the Police Department has the same ability to enforce codes as code enforcement does, along with fire code violations.

City Attorney Noe noted that, if it's extended the way Council intends, it will be marked no parking.

Council Member Tierney moved, and Council Member Williams seconded, to approve the Resolution Approving the Preliminary Plat of "Somerset II" (912.42.15-02) and Adopting Findings and Conditions of Preliminary Plat Approval, with the addition of the amendment previously approved by Council. Roll was called: Council Member Overby –yes; Council Member Tierney – yes; Council Member Sample – recused; Council Member Williams – yes; Council Member Ritchie – yes. By voice vote, approval was unanimous.

Council Member Sample resumed his seat at the table.

* 3. Resolution establishing August 25, 2015 as the public hearing date to consider the adoption of the "Selah Transit Development Plan"

* 4. Resolution Authorizing the Mayor to sign a letter to confirm continuing commitment to Project Match for the Valleyview Avenue/South Third Street/Southern Avenue Project's Right of Way and Construction phases.

N. Ordinances

1. Ordinance Amending the 2015 Budget for the Purchase of 107 W Selah Avenue

Clerk/Treasurer Novobielski addressed N – 1. He said that this is a budget adjustment to the current budget for the purchase of a property that will provide additional parking at the Civic Center and promote Park and Ride usage. He noted that the Mayor was Authorized to sign for the purchase of the property at the June 9th Council Meeting, which the City has since acquired.

Council Member Williams wondered if it would have the same surface as the rest of the parking area.

Public Works Director Henne responded that he's not sure, as he used all he had of that surface. He stated that it would be something similar.

Council Member Overby moved, and Council Member Williams seconded, to approve the Ordinance Amending the 2015 Budget for the Purchase of 107 W Selah Avenue. Roll was called: Council Member Overby –yes; Council Member Tierney – yes; Council Member Sample – yes; Council Member Williams – yes; Council Member Ritchie – yes. By voice vote, approval was unanimous.

O. Reports/Announcements

1. Mayor

Mayor Gawlik thanked the departments who participated in National Night Out, and congratulated the Wastewater Treatment Plant crew on their award.

2. Council Members

Council Member Ritchie stated that it was a great National Night Out.

Council Member Overby expressed his appreciation to the Public Works Department for the great distinction for receiving a Department of Ecology (DOE) award so many times.

Council Member Sample said that he would like to see a picture of how the Council wants him to do the street in his Planned Development.

Council Member Tierney said that he's been on the Council almost eight years, and every year the Wastewater Treatment Plant is awarded this by the DOE. He extended his thanks to them for continuing to do a good job, saying that they as a council need to make sure they reward them properly when the time comes. He remarked that he went to National Night Out, and complimented the Fire Department, Police Department, Public Works, and Parks for their efforts.

Council Member Williams said that she had no report on the Selah Park & Recreation Service Area Board, but they are working on getting final figures for the proposed pool for the bond issue. She thanked her fellow Council Members, Public Works Director Henne, and Community Planner Durant for the hard work they've done, and commented that she is looking forward to a retreat to discuss issues and continue to work on City codes.

3. Department

Public Works Director Henne felt that it was nice to recognize the Wastewater Treatment Plant guys for their efforts, as they do a good job ensuring that the City complies with discharge permits. He expressed his appreciation for passing the Resolution for the project he's trying to keep alive.

Community Planner Durant had no report.

Clerk/Treasurer Novobielski said that it's time to start thinking about the 2016 budget, noting that a calendar of the budget process was placed in each Council Member's box. He added that the Council and Department Head budget meetings are slated for October 20-22.

Recreation Manager Brown had no report.

Fire Chief Hanna said that they're continuing public education, which included participating in both National Night Out and the opening ceremonies for Relay for Life. He noted that July set a records for call volume with one hundred forty calls, of which twenty-three percent were overlapping.

Police Chief Hayes stated that National Night Out had a huge turnout, and read aloud a list of people he wished to thank. He commented that they are in the process of picking a 2016 Chief for a Day, and starting to hit people up for Polar Plunge donations. He noted that his department averages three hundred sixty calls per month.

Assistant to the City Administrator Potter said that the Yakima Training Center will be hosting an invitation only open house, and that they wish to have the City Department heads and Council Members attend. He noted that the event would run from ten am to two pm. And would give people a chance to view the Training Center facilities and see what they do.

City Administrator Wayman had no report.

City Attorney Noe had no report.

4. Boards

a. Planning Commission Minutes – July 21, 2015 Meeting

P. Executive Session

1. ~~30 Minute Session – Real Estate RCW 42.30.110(1)(b)~~ **REMOVED**

Q. Adjournment

Council Member Tierney moved, and Council Member Sample seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 6:51pm.

_____

John Gawlik, Mayor

Paul Overby, Council Member

John Tierney, Council Member

EXCUSED

Dave Smeback, Council Member

EXCUSED

Allen Schmid, Council Member

Roy Sample, Council Member

Jane Williams, Council Member

Laura Ritchie, Council Member

ATTEST:

Dale E. Novobielski, Clerk/Treasurer

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING	ACTION ITEM
8/25/2015	I – 2

Title: Claims & Payroll

Thru: Donald Wayman, City Administrator

From: Monica Lake, Executive Assistant

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: See Check Registers

Funding Source: Various. See Check Registers.

Staff Recommendation:

Approval of Claims & Payroll as listed on Check Registers.

Background / Findings & Facts:

See Check Registers.

Recommended Motion:

Motion to Approve the Consent Agenda as read. (This item is part of the Consent Agenda)

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **K – 1**

Title: Public Hearing to consider the resolution adopting the Selah Transit Development Plan, including the annual report for 2014 and six-year Plan 2015-2020.

Thru: Donald Wayman, City Administrator

From: Andrew Potter, Assistant to the City Administrator

Action Requested: Public Hearing / Public Meeting

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

To hold a public hearing to consider the Selah Transit Development Plan

Background / Findings & Facts:

The WSDOT requires that we submit, annually, an official report for the previous year and an updated six-year plan. This needs to be passed to continue to be eligible for grant funding.

Recommended Motion:

Open the Public Hearing

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
1/13/2015	Set a public hearing for the Selah Transit Development Plan
1/27/2015	Public hearing to consider the resolution adopting the Selah Transit Development Plan
1/27/2015	Resolution adopting the Selah Transit Development Plan, including the annual report for 2013 and six-year Plan 2014-2019.
8/11/2015	Set a public hearing for the Selah Transit Development Plan
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **M – 1**

Title: Resolution Upholding City Administrator decision approving Class 2 Use for six unit multiple family dwelling (926.45.15-02)

Thru: Donald Wayman, City Administrator

From: Thomas R Durant, Community Planner

Action Requested: Approval

Board/Commission Recommendation: Approval

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Approval.

Background / Findings & Facts:

City Administrator acting as Reviewing Official for Class 2 Use Review issued a Notice of Development Application on May 29, 2015 for a multiple family residential development: a six-plex consisting of an existing single-family dwelling attached to five additional units. The City Administrator issued the final decision approving the application on June 19, 2015.

Recommended Motion:

I move the Council uphold the decision of the Administrative Official to approve the Class 2 Use application of Torkelson Construction, Inc.

(926.45.15-02) to construct a six unit multiple family residential development in the Two-Family Residential (R-2) zoning district.

RESOLUTION NO. _____

RESOLUTION UPHOLDING THE FINAL ADMINISTRATIVE APPROVAL BY THE ADMINISTRATIVE OFFICIAL (926.45.15-02) AND ADOPTING FINDINGS AND CONCLUSIONS FOR A CLASS 2 USE

WHEREAS, on August 25, 2015 the City of Selah City Council considered an appeal by Mark E. Fickes on behalf of John and Helen Teske of the final decision by the Administrative Official to approve a six-unit multiple family residential development at the north end of Bowers Drive, approximately 550 feet north of E. Goodlander Road. Yakima County Taxation Parcel Number: 181425-33426; and,

WHEREAS, the Administrative Official recommended approval of the Class 2 Use for the proposed six-unit multiple family residential development in a Two-Family Residential (R-2) zone; and,

WHEREAS, the City of Selah Council has considered the appeal, the Administrative Official's findings of fact and conclusions and the August 19, 2015 City staff report for the appeal and the Council is satisfied that the matter has been sufficiently considered; and,

WHEREAS, the City Council adopts the Findings and Conclusions of the Administrative Official's Final Decision dated June 19, 2015 and adopts the following additional conclusions:

1. The reviewing official properly considered this application and did not have an obligation to refer it to the Planning Commission.

2. Adequate notice was given as required by State and City requirements.

3. Environmental Review has been completed for the planned development and preliminary plat, has not been appealed, is adequate and issuance of the Class 2 decision under WAC 197-11-070 does not have significant adverse environmental impacts or preclude reasonable alternatives.

4. The project complies with the development standards of Title 10, Selah Municipal Code. In particular, setback, height and lot coverage standards are met.

5. The project is consistent with the intent and character of the R-2 zone and Moderate Density Residential (MDR) comprehensive plan designation including density. The MDR plan designation states that the mix of housing types is to be limited by the maximum density and zoning standards will assure compatibility. The project is consist with the maximum density and complies with <u>all</u> zoning standards. There are no zoning standards that regulate view obstruction or architectural style.

6. Surfacing, arrangement, screening of proposed structures and improvements are compatible with existing and reasonably expected future development.

7. The property has been designated Moderate Density Residential by the Comprehensive Plan, with a maximum density of 12 dwelling units per acre since 1997. The current R-2 zoning has been in place since 2000.

8. The present and future needs of the community will be adequately served by the proposed development. The community as a whole will benefit rather than being injured. In particular, the proposal helps to meet a need for more upscale, affordable rental housing in the community.

WHEREAS, the City Council considered the elements of public use and interest to be served by the proposed Class 2 use, and

WHEREAS, the City Council considered the elements of public health, safety, and general welfare pertaining to the proposed Class 2 Use;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the appeal filed by Mark E. Fickes on behalf of John and Helen Teske be denied, that the Administrative Official's Final Decision be upheld and that Class 2 Use Review Application No. 926.45.15-02 of Torkelson Construction, Inc. for a 6-unit multiple family residential development be approved with the three (3) specific conditions contained in said Final Decision and a copy of which is attached hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 25th day of August, 2015.

_____
John Gawlik, Mayor

ATTEST:

_____
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

_____
Robert Noe, City Attorney

CONDITIONS OF APPROVAL

1. An access easement shall be established along the south property line for the proposed "temporary fire turnaround" on the boundary between the lot and the adjoining lot to the south prior to issuance of a certificate of occupancy.

2. Proposed parking areas (i.e., residential driveways) shall be constructed of concrete as proposed by the application. The "temporary fire turnaround" shall be hard surfaced, 20 feet in width and constructed to Fire Code requirements. It has been assigned the name "Whisper Way" for addressing purposes. A sign bearing that name shall be installed to assist emergency responders in finding and identifying the road.

3. The applicant shall have one year from the date of this decision to complete the authorized improvements and conform to the requirements. The completion date may be extended in the manner provided for by the municipal code.

SELAH CITY COUNCIL
Class 2 Review Appeal
STAFF REPORT
August 19, 2015

APPEAL DESCRIPTION: The City of Selah received an appeal of the Administrative Official's June 19, 2015 Final Decision of a Class 2 Use Review for an application by Torkelson Construction, Inc. for Multiple Family Residential 6 – 12 units per acre (File No. 926.45.15-02). The reasons for appeal are documented below.

APPELLANT: Mark E. Fickes, Halverson Northwest Law Group, P.C. on behalf of John and Helen Teske.

LOCATION: North end of Bowers Drive, approximately 550 feet north of E. Goodlander Road. Yakima County Parcel Number: 181425-33426

BACKGROUND: Torkelson Construction Company, Inc. applied for a Class 2 Use review to construct a multiple family residential development consisting of five dwelling units attached to an existing single-family dwelling on a 0.53 acre parcel. Each unit is to be served by a separate driveway wide enough to accommodate two parking spaces. A 20-foot wide paved access road designated on the site plan as a temporary fire turnaround is also proposed. It occupies an access easement of the same width and straddles the project site and the adjoining lot to the south. A T-turnaround is proposed at the end of the road.

Under the Selah Municipal Code, the reviewing official reviews the Class 2 Use application and prepares written findings and conclusions stating the specific reasons for the approval or denial of the application and shall ascertain that the present and future needs of the community will be served by the proposed development and that the community as a whole will be benefited rather than injured (SMC 10.06.040(8)(A)). Administrative approvals may be appealed by the applicant or parties of record to the City Council (SMC 21.11.010). Since this is the first public hearing on a land use matter, the Class 2 Use Review appeal hearing is open record. Substantial weight shall be given to the reviewing official's decision or recommendation in any subsequent review (SMC 10.06.040(9)).

The Reviewing Official's final decision, issued on June 19, 2015 is attached to, and incorporated by reference in this report. The decision was made based on the following conclusions:

a. The project complies with the development standards of Title 10, Selah Municipal Code. In particular setback, height and lot coverage standards are met.

b. The project is consistent with the intent and character of the R-2 zone and the Moderate Density comprehensive plan designation including density.

c. Surfacing, arrangement, screening of proposed structures and improvements are compatible with existing and reasonably expected future development.

d. The present and future needs of the community will be adequately served by the proposed development. The community as a whole will benefit rather than being injured. In particular, the proposal helps to meet a need for more upscale, affordable rental housing in the community.

PROCEDURAL HISTORY: The application was determined to be complete for processing on May 27, 2015. The Notice of Intent to Approve a Class 2 Use was circulated to property owners within 600 feet of the property as required by SMC 21.07.020 with a comment period that ended on June 12, 2015. Forty-nine citizen comment letters were received including written comments from the appellants and the law firm that filed this appeal. After reviewing all submitted comments, the Reviewing Official issued the final decision on June 19, 2015, subject to three conditions.

The proposal, consisting of six residential units, parking for fewer than 40 vehicles, and excavation of less than 500 cubic yards would normally be categorically exempt from SEPA review by SMC 11.40.110 (a), (d) and (e). However, as a part of a larger proposal (based on the concurrent application for Planned Development) it is not considered to be exempt based on the SEPA requirements of WAC 197-11-305. Under the requirements of WAC 197-11-305(b)(ii) the agency may proceed with the exempt aspects prior to conducting environmental if the requirements of WAC 197-11-070 are met. Those requirements are that the exempt actions not have an adverse environmental impact or limit the choice of reasonable alternatives. The SEPA Responsible Official's determination that this application may proceed before SEPA review for the larger project is completed is based on the following findings and conclusions:

a. No additional units of the concurrently proposed Planned Development may be constructed until environmental review is completed.

b. All of the development standards of Title 10 are being met by the proposed application. Subdivision standards are not being considered since this Class 2 application is being developed on existing platted lots and does not require approval under the subdivision ordinance.

c. If the Planned Development were not completed, the proposed use could stand alone; it does not require the completion of additional units on the adjoining properties in order to function.

d. The maximum number of dwelling units accessing E. Goodlander Road would be 20, which does not require a second access point under the Fire Code.

e. Class 2 Review gives the administrative official the authority to impose conditions to the extent that compatibility impacts are identified.

The SEPA determination that is applicable to this project was completed with a Mitigated Determination of Nonsignificance issued on June 29, 2015. It was not appealed. Required mitigation measures are as follows:

1. The private access roads shall be constructed at minimum, to the fire apparatus road standards of the International Fire Code and as shown on the preliminary plat, except where variations have been authorized by the Fire Chief (such as grades) in accordance with the IFC.

2. Recommendations made for the private roads by the Traffic Impact Analysis including illumination and warning signs shall be implemented.

3. The negative determination is based on the current revised site plan and grading and drainage plans submitted by the applicant. Any future revisions shall at minimum include the provision of 8 overflow parking spaces, more than one access point to the public street system and construction of the easterly private access road to not exceed the slope shown on the site plan.

4. The applicant shall pay an amount to the City sufficient to pay for the installation of a sidewalk on the entire E. Goodlander Road frontage of the subject property. The amount of payment required shall represent the applicant's proportionate share of the cost of its installation based on lineal footage and on the City's engineering estimate for the costs of installation. In the event that actual costs to install the sidewalk exceed the engineer's estimate, the applicant shall pay an amount in addition to the amount already paid so that the sum of both payments do not exceed a total of 115% of the engineer's estimate.

COMPREHENSIVE PLAN & ZONING: The subject property and adjacent parcels that are located in the Selah City Limits are zoned R-2 (Two Family Residential) and designated Moderate Density Residential (MDR) by the Selah Urban Area Comprehensive Plan. The Comprehensive Plan designation was first applied to the property by the Future Land Use Map adopted in the October 1997 Selah Urban Growth Area Comprehensive Plan. Subsequently in 2000, Yakima County zoned the site and adjoining properties on the north side of Goodlander Road from R-1 to R-2.

In the January 2005 update of the Comprehensive Plan, the future land use designation of Moderate Density Residential remained unchanged. In 2009, the property owners petitioned the City for annexation of the MDR designated properties into the City. The undated staff report for the annexation recommended that the properties retain the R-2 zoning to be consistent with the Moderate Density Residential future land use designation. The City Council approved the annexation by Ordinance 1851 which states at §4: "The property described in Exhibit A is hereby classified and zoned as Two-Family Residential (R-2)".

APPELLANT'S ARGUMENTS *(Staff Responses in Italics)*:

1. The reviewing official had a clear and extreme conflict of interest and should not have issued a decision on the Class 2 application because he lives in the development at issue, has a contractual relationship with the Applicant and Property Owner (they are his landlord), had ex-parte contacts about the development, which makes his approval of this hotly contested development a violation of municipal law, including Washington's Appearance of Fairness Doctrine (RCW 42.36, et seq.)

Staff Response: The City Attorney prepared a memorandum to staff dated July 9, 2015 in reference to "Torkelson Class 2 Permit Application – Alleged Appearance of Fairness and Conflict of Interest Issues". The memorandum is attached to and incorporated into this report by reference. Its main points are that the Appearance of Fairness Doctrine does not apply to the City Administrator because he was not engaged in a quasi-judicial proceeding (hearing); because there was no quasi-judicial proceeding, the City Administrator engaged in no ex-parte communication; there is nothing to suggest that the City Administrator financially benefited or was financially impacted by making the Class 2 Use decision; that the Administrator is not being asked to consider and approve a contract in which he might have some beneficial interest and even if there was a contract, a lease agreement is not sufficient basis to serve as a conflict. A contract interest of a landlord or tenant is a "remote interest" under RCW 42.23.040. Furthermore, the City Administrator does not consider his rental agreement to be of enough financial significance to him to have any influence on decisions he makes with respect to the applicant.

The decision to summarily approve the Class 2 use without a hearing (which the City readily admits is really part of a larger project) calls the entire process into question, forcing adjoining homeowners to file expensive appeals for substantially the same development that is already under parallel review. It is difficult to justify why the reviewing official chose not to exercise his discretion set forth in SMC 10.06.040(6)(e) to refer the Class 2 application in which he had a direct conflict of interest to the Planning Commission or, perhaps in this case, the Hearing Examiner who is already in the process of conducting an open-record hearing on an almost identical application from the same developer

Staff Response: While filing applications for two separate developments at the same time on the same property is admittedly not typical, it is not illegal. Staff sought and received confirmation of this from the City Attorney. The applicant has a right to apply for this Class 2 Use and the City has the obligation to process it. The discretion the Reviewing Official has under SMC 10.06.040 (6)(e) is to refer the application to the Planning Commission, not the Hearing Examiner. It is ironic that the appellant would argue that the Reviewing Official should not make a decision on this application based on a landlord-tenant relationship with the applicant and expect the application to then be referred to the Planning Commission of which the applicant is a member. While it is staff's expectation that the applicant would properly recuse himself from consideration of the proposal if it were referred to the Planning Commission, it is also staff's expectation that the appellant would be making the same or similar arguments about the suitability of the Planning Commission to consider the case. It is the concerns raised by the appellant of this being a "hotly contested development" that the City Administrator felt that his making the decision was the best course of action.

2. **The application was not complete in accordance with Title 21.**

   Staff Response: While the appellant alleges that the application was not complete, nothing has been provided in support. "All applications...shall include the information specified in the applicable title and on the application. The administrator may require additional information..." (SMC 21.05.030(a)). Under SMC 21.05.050(b), a permit application shall be determined to be complete only when it contains all of the following:

   a. Fully completed, signed and acknowledged development application and all applicable review fees. *Application and site plan are included in the record.*

   b. SEPA checklist when not exempt. *As stated in the Preliminary and Final Class 2 decisions and in this report, while the application is not considered to be exempt from SEPA review, the SEPA Responsible Official allowed the application to proceed while SEPA is being conducted on the larger development of this property in accordance with WAC 197-11-070 and WAC 197-11-305(b)(ii).*

   c. The information specified for the desired project in the appropriate chapters of SMC 10 and 11. *The project is being considered under SMC 10 as a Class 2 Use Review for multiple family residential 6 to 12 dwelling units per acre. Multiple Family Dwelling is marked as being defined in SMC 10 but there are no regulatory notes for this use in SMC 10.28. The application clearly shows that the required density range is met. (The application describes the project as adding 5 units to that existing to form a 6-plex and identifies the comprehensive plan requirement of 12 units to the acre; the site plan shows the area of the proposed lot). Application requirements for Class 2 Review include a completed application form, required fees and other attachments necessary to review the proposal for conformance with [Title 10] (SMC 10.06.040(1)). There are no specific submittal requirements that are applicable to this level of review under SMC 11, except for SEPA requirements, which have already been discussed.*

   d. Any supplemental information or special studies identified during technical review of by the administrator for the desired project in the appropriate chapters of SMC 10 and 11. *A need for supplemental information or special studies was not identified during review of the application.*

3. **The processing and approval of the application failed to comply with the procedural and substantive aspects of the State Environmental Policy Act (SEPA). The application and proposed development was part of a larger proposal subject to SEPA whose applications were pending (a planned development, rezone and plat). SEPA review should been conducted in accordance with local and state procedures before a decision was made.**

Staff Response: The action of proceeding with the application was taken as provided for based on the determination of the SEPA Responsible Official that the requirements of WAC 197-11-070 were met. Those requirements are that the otherwise exempt actions being allowed to proceed do not have an adverse environmental impact or limit the choice of reasonable alternatives. This determination was made because if the concurrent application for the property (i.e., the planned development and preliminary plat) were denied, the subject application could stand on its own as a viable development. The same application could also have been made after applications for the larger project were denied and could be approved in the same location and configuration as was approved by the Reviewing Official. This is the primary basis under which the SEPA determination was made. The following findings and conditions supported this determination:

a. *No additional units of the concurrently proposed Planned Development may be constructed until environmental review is completed. (This keeps the number of dwelling units below the required SEPA flexible threshold of six).*

b. *All of the development standards of Title 10 are being met. Subdivision standards are not being considered since the Class 2 use is being developed on existing platted lots and does not require approval under the subdivision ordinance.*

c. *If the Planned Development were not completed, the proposed use could stand alone; it does not require the completion of additional units on the adjoining properties in order to function.*

d. *The maximum number of dwelling units accessing E. Goodlander Road would be 20, which does not require a second access point under the Fire Code.*

e. *The Reviewing Official has the authority to impose conditions to the extent that compatibility impacts are identified.*

The SEPA review has since been completed for the larger planned development project. None of the identified mitigation measures conflict with or are precluded by the development proposed by this application and the SEPA determination was not timely appealed.

The reviewing official's Finding #13 is not supported by any substantial evidence in the record and/or is clearly erroneous. No conditions were imposed to mitigate the obvious compatibility impacts on the Teskes' property and the processing and approval of the Class 2 use application clearly limits the choice of reasonable alternatives of pending applications involving the same property.

Staff Response: Finding #13 is the finding concerning how SEPA review was being conducted with respect to this application. The reasonable alternatives under SEPA that are being asserted presumably involve the compatibility concerns raised by the appellant. At the time of

consideration of this application, the primary SEPA concerns that were being addressed for the larger proposal were traffic impacts on East Goodlander Road and the suitability of private roads to accommodate the larger development. The impacts that have been suggested by the appellant and other comment letters have to do with the use of private roads, view obstruction, building height, architectural style, and project density. With the exception of the private roads, these issues were not being considered to be significant adverse environmental impacts because the Planned Development and Preliminary Plat met the building height standards of Title 10 and the setback standards from the exterior property lines of the project site. The density of the proposed Class 2 development also met the maximum density standard for Moderate Density Residential development.

The use of the private road with respect to the Class 2 application is addressed in Finding #20, view obstruction and architectural style in Finding #21, and density in Finding #22 of the final decision. In general, these findings are that the proposal conforms to the standards of Title 10, that view obstruction and architectural style are subjective with no clear standards to regulate them, that the private road access is not shared with other adjoining property owners and that density standards are being met. With the exception of the use of private roads, the compatibility impacts suggested by the applicant were ultimately determined through the SEPA process, now completed, to not be significant adverse environmental impacts. Mitigation measures required for the private roads are not precluded by the Class 2 Review decision. The final SEPA determination has not been appealed.

Provisions of the Selah Municipal Code clearly authorize the administrative official and Selah City Council to impose conditions on the property and project, which among other items, could limit the number of units on the property, limit the height of units, increase setbacks, create green spaces, require fencing, etc, all of which would be precluded if the Class 2 use is approved and the units are built.

Staff Response: This statement apparently refers to the planned development and preliminary plat, rather than the Class 2 Use proposal, since it states that the imposition of these conditions would be precluded by Class 2 approval. It is true that these conditions could be imposed on those applications. They could have also been imposed on this Class 2 application. The Reviewing Official determined that they should not be as stated in other findings of this report. The Planned Development and Preliminary Plat applications could also be denied. The approved Class 2 Use could then be developed independently of the larger proposed project and could stand as a viable project on its own. This is a key factor in the SEPA Responsible Official's determination that the Class 2 Use could proceed under WAC 197-11-070.

4. The proposed 6-plex does not meet the definition of a "multi-family dwelling" under Appendix A to the Selah zoning ordinance, and instead is an illegal attempt by the Applicant to put six separate townhouses on one lot, in a near identical configuration to a pending planned

development, rezone and plat. Despite a nonfunctional closet connection, the project remains six separate buildings prohibited on one lot under the zoning ordinance.

Staff Response: The ruling made by Judge Hackett in South Selah Neighborhood Association et. al. v Selah et. al. was that a causeway connection between separate units was non-structural, appeared cosmetic, served no structural purpose or utility and was not designed to improve liveability of the separate building. The proposed closet connections are structural, serve a purpose and provide additional closet space. The applicant states that this approach was approved by the judge. It has also been used in other parts of the City. Lacking other information to the contrary, it is staff's conclusion that this approach conforms to the definition of "multi-family dwelling".

5. The proposed development does not make adequate provision for water, roads and other infrastructure improvements to serve the development (SMC 10.06.060), including failure to mitigate traffic impacts to Goodlander Road and the intersection of Lancaster Road and Goodlander, and approval and construction of a portion of the project limits the ability of the City to require wider and more functional roads for the remaining portion of the project under review.

   Staff Response: Staff is satisfied based in part on familiarity with the site and information provided by both this application and the other pending applications for the project that water, sewer and other infrastructure improvements are adequate to provide for the proposed Class 2 development. The transportation impact analysis (TIA), which documents no adverse traffic impacts on Goodlander Road and the intersection with Lancaster Road had already been submitted at the time the Reviewing Official's final decision was made on the application. It was also believed that the traffic generated by these six dwelling units alone would not have been enough to warrant requiring the TIA. The final Mitigated Determination of Nonsignificance that was ultimately made was based on there being no significant impacts on these intersections and on the mitigation measures identified for private roads on the site. That SEPA determination is final and was not appealed. Even if it had been determined that wider roads would be needed for the remaining portion of the site, it would not have been precluded by the approval of this Class 2 project in its location at the upper end of the proposed and existing private roads.

6. The Findings and Conclusions failed to comply with the review criteria for Class 2 use applications, including SMC 10.06.020(2) which expressly requires conditions to "ensure compatibility and compliance with the provisions of the zoning district and the goals and policies of the Comprehensive Plan, and if not, the Class 2 application must be denied." Given obvious compatibility conflicts with adjoining low density, R-1 neighborhoods, the reviewing official failed to impose conditions to mitigate the material impacts of the environment to ensure compatibility with existing neighboring land uses, to achieve the goals, objectives and policy of the Comprehensive Plan and "to ensure that the structure and areas proposed are surfaced, arranged and screened in such a manner that they are compatible with and not detrimental to

existing or reasonably expected future development of the neighborhood...". SMC 10.06.060(a) & (b).

7. Approval of the Class 2 use is inconsistent with the goals and policies of the Comprehensive Plan, including failure to upgrade the character of existing residential neighborhoods (Objective HSG 1) and failure to encourage residential development to approximate residential densities and housing mix levels (Objective HSG 2).

Staff Response: Both points '6' and '7' made by the appellant are based on an assumption that the proposed use is incompatible with and does not represent an upgrade of existing residential neighborhoods. The Intent Statement for the Moderate Density Residential future land use designation from the Comprehensive Plan includes the statement "The mix of housing types is to be limited by the maximum density and zoning standards will assure compatibility". This is documented in Finding #16 of the final decision. Zoning standards and other findings that document compatibility include setbacks, parking, building height and density all in conformance with the density and zoning standards consistent with the intent statement. There are also findings that the private road is not shared with the adjoining properties except those owned by the applicant and does not access the same public roads as adjoining properties.

Findings concerning the quality of the development that were developed more fully in the July 24, 2015 staff report for the planned development and preliminary plat are that the proposed dwelling units are larger than typical for multiple-family residential projects, provide for "desirable low maintenance lifestyle neighborhoods" and target a more upscale market while maintaining their affordability to it. Quality of the development is also suggested by the units apparently being highly in demand with no evidence that they are substandard or violate current construction codes. The required standard for building height is being met and the City has no standards for architectural style or means of evaluating it consistently.

The Comprehensive Plan objective of encouraging residential development to approximate residential densities and housing mix levels should be considered with the more specific language of Policy HSG 2.1:

> *"Encourage the combined net density of all residential development to remain at present levels. <u>Exceptions to this policy should be permitted where the developer can demonstrate that the quality of project design, construction and amenities warrants a different density</u>" (emphasis added).*

Findings made in the final decision include the surrounding residential area being only partially developed and still in transition and that due to the Moderate Density Residential comprehensive plan designation the density would be expected to be higher than that of the surrounding areas with a Low Density Residential plan designation. In addition to this, the quality of project design, construction and amenities being provided, as evidenced by documentation from the planned

development application and the demand for these units could be considered "exceptions to this policy".

8. The Class 2 use constitutes an illegal phased development where the applicant/owner is trying to do incrementally what is and should be subject to more advanced or detailed review under SEPA, and the planned development, rezone and plat ordinances of the City.

   Staff Response: This has been addressed by above staff responses that are as summarized: Separate simultaneous applications on the same property are not illegal, the SEPA Responsible Official allowed the application to be processed under provisions allowed by SEPA, in large part because this project could stand alone without further development of the planned development. Also, SEPA review has since been completed, the project is consistent with and does not violate or preclude the mitigation requirements and the SEPA determination has not been appealed.

9. The decision on the Class 2 review should have been put on hold pending processing of the application of the entire project, which is awaiting completion of SEPA and an open record public hearing before the hearing examiner.

   Staff Response: As of the date of this report and appeal hearing, SEPA has been completed, the open record hearing before the Examiner was held and a recommendation on the planned development and preliminary plat issued.

10. Findings 13 – 24 are not supported by any substantial evidence in the record and are incorrect and conclusions 1 – 4 are clearly erroneous based on the record.

    Staff Response: Finding #13 cites references from SEPA, City Code and includes determination made by the SEPA Responsible Official.

    Finding #14 is based on the application, site plan, and the definition of Multi-Family Residential in SMC 10.

    Finding #15 summarizes comment letters that are in the record (Exhibits 1 through 48).

    Finding #16 is word for word from the Comprehensive Plan.

    Finding #17 is also from the Comprehensive Plan.

    Finding #18 is based on the application, site plan, SMC 10.28 and the Comprehensive Plan.

    Finding #19 is based on comment letters as noted above.

Finding #20 is based on the site plan, visual inspection of the site and surrounding properties, zoning and subdivision standards from SMC 10, the decision issued for the Bowers short plats, and SEPA documents.

Finding #21 is based on review of the regulations of SMC 10, the comprehensive plan, the site plan and application.

Finding #22 is based on comment letters, the comprehensive plan, visual inspection of the site and surrounding properties and property information from publicly available sources.

Finding #23 is based on comment letters and the Planning Commission decision approving the variance for the Bowers Short Plats.

Finding #24 is based on an apparent lack of rental units in the community. This is supported by documentation that occupancy rates are at or approaching 100%.

The remainder of the appeal includes a series of requests to the Council that include denial of the Class 2 Use application, or as an alternative reversal and repeal of the decision and remand back to the Hearing Examiner to be considered together with the planned development, rezone and plat with a final decision made by the Council at the same time. The appellant also requested that building permits not be issued until all appeals are resolved and decision on the larger integrated project made.

Staff Response: Since SEPA has been completed and not appealed and the Hearing Examiner has conducted the hearing and issued a recommendation, some of this request should be considered moot. Unlike other nearby jurisdictions, the Selah Municipal Code does not stay the issuance of building and development permits when an appeal has been filed. The applicant has been notified that any construction taken before the appeal process has been completed is at his own risk (Exhibit 5).

CONCLUSIONS: In review of the Appellant's arguments and the above Findings, staff makes the following conclusions:

1. The reviewing official properly considered this application and did not have an obligation to refer it to the Planning Commission.

2. Adequate notice was given as required by State and City requirements.

3. Environmental Review has been completed for the planned development and preliminary plat, has not been appealed, is adequate and issuance of the Class 2 decision under WAC 197-11-070 does not have significant adverse environmental impacts or preclude reasonable alternatives.

4. The project complies with the development standards of Title 10, Selah Municipal Code. In particular, setback, height and lot coverage standards are met.

5. The project is consistent with the intent and character of the R-2 zone and Moderate Density Residential (MDR) comprehensive plan designation including density. The MDR plan designation states that the mix of housing types is to be limited by the maximum density and zoning standards will assure compatibility. The project is consistent with the maximum density and complies with all zoning standards. There are no zoning standards that regulate view obstruction or architectural style.

6. Surfacing, arrangement, screening of proposed structures and improvements are compatible with existing and reasonably expected future development.

7. The property has been designated Moderate Density Residential by the Comprehensive Plan, with a maximum density of 12 dwelling units per acre since 1997. The current R-2 zoning has been in place since 2000.

8. The present and future needs of the community will be adequately served by the proposed development. The community as a whole will benefit rather than being injured. In particular, the proposal helps to meet a need for more upscale, affordable rental housing in the community.

RECOMMENDATION: Staff recommends that the Reviewing Official's decision approving the Class 2 Review decision be upheld with the three required conditions.

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August 21, 2015

Selah City Council
115 West Naches
Selah WA 98942

Re: Our Client/Appellant: John and Helen Teske
Matter: Torkelson Rezone, Plat and Environment Review for Whispering View Estates and Class 2 Use Applications (Selah File Nos. 914.45.14-01, 912.45.14-01, 971.45.14-01, 926.62.15-01, 926.45.15-02)
Applicant: Torkelson Construction, Inc.
Property Owner: Carl and Candy Torkelson

Dear Mayor Gawlik and Council Members:

It has come to our attention that the City Council intends to hold an executive session before the Council meeting scheduled for August 25, 2015. Apparently, the executive session would be held for the purpose of advising Council about "threatened litigation" from the project proponent, Carl Torkelson. Such an "executive session" is prohibited by Washington's Appearance of Fairness doctrine. On behalf of John and Helen Teske, we object to any "behind-closed-doors" communications between Council, staff, and the City's attorney related to the matters to be determined at the meeting. We ask that this letter be made a part of the official record in both matters referenced above. John and Helen Teske's objection to any non-public communications is based on the following:

To briefly summarize, Washington's Appearance of Fairness doctrine governs the quasi-judicial hearings scheduled for August 25, and that doctrine prohibits any private communication between *anyone* and the Council concerning the pending appeals. **Executive session is not even a concept that is applicable when the City Council engages in quasi-judicial decision making. RCW 42.30.140 (quasi-judicial hearings exception to Open Public Meetings Act).** Instead, Council meetings held solely to hold quasi-judicial hearings are subject to the much more stringent standards of Washington's Appearance of Fairness Doctrine.

The Appearance of Fairness dictates that the City Council must make its decision based on the facts presented at a quasi-judicial hearing – nothing more. When the Council hears land use appeals, it sits in a quasi-judicial decision making capacity, and the Appearance of Fairness Doctrine applies. *See* RCW 42.30.140; RCW 42.36.010. According to Washington's Municipal Research and Services Center (MRSC),

> The appearance of fairness doctrine applies to quasi-judicial hearings, not to legislative hearings. It is permissible, even expected, that members of a public body will have biases and will be lobbied by constituents when the matter is legislative. **Different rules apply to quasi-judicial hearings, where a decision maker is not permitted to prejudge or have biases regarding a matter. Ex parte communications - communications with members of the decision-making body outside the context of the public hearing - are prohibited in quasi-judicial proceedings.**

MRSC, *Public Hearings and How To Hold Them*, http://mrsc.org/Home/Explore-Topics/Governance/Legislative-Organization,-Meetings-and-Process/Public-Hearings-When-and-How-to-Hold-Them.aspx (accessed August 19, 2015) (emphasis added).

MRSC's guidance document goes on to explain the proper procedures for holding a quasi-judicial hearing – none of which include secret, behind-closed-doors discussions of litigation related to the very issue to be determined at the hearing. MRSC's approved procedure comports with the Appearance of Fairness Doctrine's requirements that the decision maker be impartial and that the hearing be procedurally fair. *See Fleming v. City of Tacoma*, 81 Wn.2d 292, 299 (1972). Any non-public conversation which may influence the Council's decision, held before or during the hearing, violates the policy as well as the letter of the Appearance of Fairness Doctrine. Violations of the Appearance of Fairness Doctrine can provide a basis for invalidating a decision. *Org. to Pres. Agr. Lands v. Adams Cnty.*, 128 Wn.2d 869, 886 (1996).

Courts have found that due process protections inherent in the Appearance of Fairness Doctrine are violated when parties are denied the opportunity to know the facts on which the decision maker acts, cross-examine witnesses, or offer rebuttal evidence. When a hearing is quasi-judicial, "it would appear particularly pertinent to an objective factual evaluation of the testimony presented to permit cross-examination in a reasonable degree." *Chrobuck v. Snohomish Cnt.,* 78 Wn.2d 858, 870 (1971). Hearings by quasi-judicial decision making bodies must be conducted so that only the relevant opinions of interested parties will be considered and weighed, otherwise the call for a public hearing becomes "an exercise in futility-an empty ceremony conducted simply to provide evidence of mechanical compliance with the statute required the public hearing while concealing the purpose of evading it." *Smith v. Skagit County*, 75 Wn.2d 715, 742 (1969). The proposed "executive session," wherein the Council will receive additional facts that will not be made a part of the record is therefore a clear violation. The givers of information to the Council in a nonpublic meeting would not be subject to cross examination, and the parties and the public would be deprived of their right to know all of the bases for the Council's decision.

In addition, in these hotly-contested land use matters, the City's staff and legal counsel have been intimately involved in decision-making to date, and have essentially become advocates for their own decisions. Allowing staff and legal counsel free access to Council to justify their actions – prior to the hearing in which those very actions will be evaluated – would only add to the public's perception that the "fix is in." There is a time and a place for the City's staff to justify their decision: out in the open at the hearing. The Appearance of Fairness Doctrine requires it.

Based on the above analysis, John and Helen Teske object to any non-public discussion between the Council and the City's attorney or staff related to the scheduled hearings. Please make this letter a part of the record for the two above-referenced applications.

Regards,
Halverson Northwest Law Group, Attorneys for John and Helen Teske

Mark E. Fickes

Mark E. Fickes

CC: Robert Noe, Attorney for City of Selah
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BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF SELAH

In the Matter of the Rezone, Plat and Environmental Review for Whispering View Estates	)	Adjoining Landowner's Brief **Opposing** Whispering View Estates Development (File Nos. 914.45.14-01, 912.45.14-01, 971.45.14-01)
Applicant: Torkelson Construction, Inc.	)	
Property Owner: Carl L. Torkelson and Candi R. Torkelson, husband and wife	)	

I. Procedural History and Background Facts

Our office represents John and Helen Teske who resides at 182 Lancaster Road, Selah, Washington (Tax Parcel No. 181425-33416) whose single-family, residential home immediately abuts this proposed development on the north. The Teskes and – as what will become clear at the open record hearing – the entire neighborhood and community will be vehemently opposed to this proposed rezone and plat because it is an illegal, overly dense, and incompatible development which does not come close to meeting the legal standards for approval under the applicable provisions of the Selah zoning ordinance. While this Brief is being submitted on behalf of the Teskes, the facts and arguments set forth would be equally applicable to any landowner opposed to the project in its immediate vicinity.

The Teskes already have submitted initial written comments in a March 30, 2015, letter opposing the development in response to a notice received from the City, which should be part of the record of the pending proceeding. The facts and arguments set forth in the letter will be supplemented by this Brief, and the arguments and testimony to be provided at the open record hearing.

A. <u>Original Rezone Application and Plat</u>.

Torkelson Construction, Inc. (hereafter "Applicant") originally applied to rezone and subdivide two parcels of R-2 zoned property in accordance with the Planned Development provisions of the Selah zoning ordinance on January 10, 2014. The original proposal would result in the subdivision of two lots totaling 3.97 acres of

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property into 48 extremely small, single-family lots and two common, open-space parcels. The application and SEPA Checklist was signed only by Carl and Candi Torkelson as **both** the Applicant and Legal Property Owner, even though they did not own the property at the time. Until December 24, 2014, the property was owned by the Bowers family. Attached to this Brief as **Exhibit A** is a copy of the Deed, pursuant to which the Torkelsons acquired title to the property. The application was never processed, in part, because of the failure by the City to conduct any environmental review under the State Environmental Policy Act (SEPA) and opposition by the neighbors. From a review of the original application, it also appears that the application was not complete (and still may not be complete) under the applicable provisions of the Selah zoning ordinance (SMC 10.24.030 and SMC 10.24.050). Promptly upon learning of the original application, the Teskes, through our office and most of the neighborhood, put the City of Selah on notice that they were opposed to the proposed development. The original application (which now apparently has been resurrected), was put on hold by the Applicant.

B. <u>Prior Short Plats and Variance</u>.

Instead of processing the rezone and dense plat up front through the detailed review procedures of SMC 10.24 (the Planned Development zone), SMC 10.40, et seq. (Selah's rezone ordinance), and conducting environmental review of the development up front in accordance with Selah's SEPA ordinance (SMC Chapter 11.40, et seq.), which is now clear was always the Applicant's intention, the Applicant tried to start the development and construction process through what it thought was a more simple process; namely, applying for contiguous short plats to divide the property into eight lots and requesting a variance to serve the eight lots by a small private road instead of a city street as required by Selah's subdivision ordinance. These applications were processed by the City, and opposed by our client and the entire neighborhood under City of Selah File Nos. 915.45.14-02, 915.45.14-03, 913.45.14-02 and 913.45.14-04.

At the time, the Teskes' and neighborhood's opposition was based on the then-applicant's (not the owner's) development intentions disclosed in the original Planned Development, rezone and plat for Whispering View Estates (an intention the Applicant, Planning Commission and, ultimately, the City denied or downplayed at the public hearings). The City, following a July 22, 2014, Council meeting, narrowly approved the short plat and variance with conditions, with Planning Commission

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members and Council concerned about the Applicant's future development intentions and the ability of future development to be served by a small, private, 20-foot wide paved road on a 26-foot access easement. The record is clear that the variance granted by the City was **not** approved to serve a 48-unit townhouse development, which is now being re-proposed, but was only approved to serve an 8-lot short plat, which legally could only support a maximum of 15 units (1 duplex on each vacant lot, plus the existing single-family residence). Because of the inter-related nature of the applications, and rather than summarizing the entire record of the short plats and variance, the Teskes would request that the entire record of the short plats and variance cited above be included as part of the record of the pending application, and that it be delivered by the City to the Examiner prior to the hearing.

C. <u>Potential Improper Construction</u>.

After receiving approval of the short plats and the variance, Carl and Candi Torkelson bought the property from the Bower family for $420,327. Shortly thereafter, the Owner and Applicant applied for and obtained building permits, and quickly constructed the small private road, and has built or is in the process of building 6 or more townhouse units on the property (one per lot), with the obvious intention and assumption that his 48-unit substandard plat and rezone would someday be approved. No environmental review was done on his building permit applications, despite the fact that it appears that more than 500 cubic yards of soil were cut and filled to build the private road – a violation of Selah's building code. The townhouse units are built in a location that does not appear to meet setbacks, and were constructed in a manner to prevent the expansion of the private street serving the development. It is clear from the record that the Applicant's variance to serve the property by a private road was only for an 8-lot short plat, and not for a 48-unit Planned Development and subdivision.

While not formally, part of the pending record, the City also accepted, processed and approved a Class 2 Use for five additional units (for a total of six) immediately in front of the Teskes' residence. The application was processed over the written objections of the Teskes, and a timely appeal has been filed. Collectively attached hereto as **Exhibit B** are copies of the Notice of Development Application, the Teskes' written objections, the reviewing official's Class 2 Use Decision, and the Teskes' Notice of Appeal. The reviewing official, Don Wayman, issued the Decision, even though SEPA had not been completed, the proposal was obviously part of the

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same project being reviewed by the Examiner, and despite the fact he had an extreme conflict of interest (because he lives in the development and the Applicant is his landlord). To add insult to injury, the City then improperly and illegally granted footings and foundation permits, and the additional units already are under construction, despite repeated requests to issue stop work orders and hold construction until Council can hear both the rezone and plat, and the Teskes' appeal of the improper Class 2 Use decision. The Teskes and the neighborhood continue to object to the pending construction, which is clearly designed to take away Council and/or the Examiner's reviewing authority, forcing decision makers to choose between tearing down a partially completed project or approving incompatible development. The Teskes believe this process was intentionally designed by the Applicant (and perhaps staff) to improperly influence both the Examiner and, ultimately, Council. The undersigned has been practicing in the real estate and land use area going on thirty years, and has never witnessed a more egregious example of improper permitting by a city (granting building permits before a discretionary decision on a zoning application has become final, and knowing a timely administrative appeal has been filed). The Teskes, by and through counsel, will be making the legal and procedural arguments in an appeal hearing before City Council, which has been tentatively scheduled for August 25, 2015. As will be summarized to the Examiner at the hearing, the Applicant's attempts to build an identical development through the back door through a series of Class 2 uses should be denied for the same reasons as its plat and Planned Development rezone should ... the project simply is incompatible as laid out, with the surrounding residential neighborhood.

D. <u>Incomplete Environmental Review</u>.

Environmental review on the application has been procedurally defective or nonexistent. While a SEPA Checklist was filed by the Applicant with the original application, the Checklist was completely insufficient to identify the environmental effects of the project. No new SEPA Checklist and application was filed **after** the Torkelsons became the property owner, as required by Selah Municipal Code, even after material changes to the site plan were made. Environmental review should have been conducted up front at the short plat and variance stage, or at least before more units were approved through a Class 2 use process, especially where the development intentions of the Applicant were clear and known by the City. Opponents believe that the Applicant has disturbed more than 500 cubic yards of soil in building the private

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road, and grading and excavation permits should have been acquired by the Applicant under the International Building Code adopted by the City of Selah.

No threshold decision required by SEPA for the project was made until July 15, 2015. From a review of the record and discussions with Selah's SEPA responsible official, Tom Durant, it appears Selah did not use the optional consolidated DNS process in WAC 197-11-355 (as adopted by Selah in SMC 11.40.100). Instead, it appears to have accepted comments, using a 2-step process for accepting comments on the environmental impacts of the proposal. The Teskes and other affected landowners continue to object to the lack of comprehensive environmental review up front, and believe this to be a procedural defect that taints the pending application. Both the Applicant's and, in part, the City's own actions in this matter were designed to defer environmental review on a very significant development that is incompatible with the surrounding area until it is partially complete and approved. Based on the size, density and proposed changes in development standards, as well as the significant traffic impacts of the proposal, Teskes believe mitigation measures to lessen compatibility conflicts should have been made.

Neither the Applicant nor the City have required or proposed any environmental mitigation measures designed to mitigate or lessen the significant, adverse impacts on the surrounding property owners identified in their March 30, 2015, comment letter, and as outlined to the City and Applicant in prior hearings on the variance. The Applicant and the City wrongfully seem to be processing this development as if it is allowed outright, as long as maximum gross densities are not exceeded. As the Examiner has recently noted in his *Somerset* decision, this is simply wrong. Here, a final MDNS issued by the reviewing official did not include a single mitigation measure to ameliorate the capability conflicts outlined by the Teskes in their written comment letter. This is not surprising, since the same reviewing official, Don Wayman, already had approved six more units in front of the Teskes' home in an identical configuration to his planned development if he connects the separate buildings by a nonstructural closet connector. Despite its obvious compatibility conflicts, City staff to date has failed to impose any conditions to lessen the impacts on the neighborhood. The Examiner and Council clearly have both the substantive and SEPA authority to impose reasonable conditions on this development, and the Teskes and the adjoining neighbors are asking that the City Examiner and City Council do so if the development is not denied outright. Such conditions could

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include, without limitation, site screening fences, increased setbacks, wider roads, additional parking requirements, height restrictions on the units – especially those closest to the adjoining homes – additional greenspace, and a lower density. A responsible developer concerned with impacts on the neighborhood would have proposed reasonable mitigation measures up front. However, this one presumes he is entitled to build what he wants as long as it meets density requirements. Again, this is an argument the Examiner already has rejected in the past, and should do so again.

II. Impacts of City's Final Decision in Somerset II Development

As the Examiner (and City) is aware, the Examiner recently recommended denial (a recommendation that was adopted by City Council) in a very similar development. *See, e.g.*, *In re Somerset II* (Selah File Nos. 912.42.14-05 and 914.42.14-04). In *Somerset II*, an owner/developer was requesting the City to rezone 4.7 acres of R-1 zoned property to Planned Development to create 24 smaller lots than allowed by the zoning ordinance in an attempt to maximize the density allowed under the Comprehensive Plan. In a well-written decision adopted by Council, the Examiner recommended denial of the application without prejudice, noting many legal issues and defects that are present in the pending application, including in no particular order the following:

- Applications for planned developments must meet the procedural and substantive standards set forth in the Planned Development provisions of the code (SMC 10.24.030 and SMC 10.24.050), the criteria for rezones (SMC 10.40.050(c) made applicable to minor rezones, as set forth in SMC 10.40.070(a)), and the Selah subdivision or platting ordinance (SMC 10.50, et seq.). *Somerset II*, at 5.
- The residential densities set forth in the 2005 Selah Comprehensive Plan are the maximum densities allowed, and **are not targets for owners and developers**; and Plan policies encouraging economic growth are **not** the same as maximizing residential densities (as is the Applicant's development intention in the present case). *Id.* at 6-7.
- Under the identical SMC provisions at issue here, an owner and applicant cannot demonstrate Comprehensive Plan conformance where the proposed density is inconsistent with the surrounding neighborhood and there is no

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"project design, construction or amenities" warrantying densities and lot sizes different from the surrounding community. *Id.* at 7.

- A much less dense planned development and plat **was not compatible with the Comprehensive Plan,** and was not in harmony with the surrounding area where 24 lots were proposed on 4.7 acres ... in the present case, a much higher density is being proposed (48 lots on 3.97 acres with much smaller, average lot size).
- The City's review of Planned Development applications "is not merely a matter of assuring the proposal meets the limitations on maximum density." *Id.* at 11.
- The density references in Selah's Comprehensive Plan are "density limitations, rather than a desired density target ...". *Id.* at 12.

Noting that the rezone criteria in the Selah Municipal Code may overlap some of the approval criteria in its Planned Development ordinance, the Examiner found that the 24-lot development being created through a rezone and plat should not be approved because the Applicant failed to demonstrate compliance with required rezone criteria, among other things finding:

- The proposed density was inconsistent with established policies in the Comprehensive Plan and surrounding neighborhood. *Id.*
- The Applicant failed to provide and the City failed to demonstrate any showing of public need for R-1 developments on much smaller lots than required by the Selah zoning code. *Id.* at 13.
- The Selah zoning ordinance requires a showing of changed circumstances in the use of the surrounding area since the last rezone, and none could be shown because the entire surrounding area was still a lower-density residential neighborhood. *Id.* at 14.
- The public testimony was overwhelmingly against the proposal, and was not the mere assertion of community displeasure, but because of demonstrated inconsistencies with the rezone criteria and stated policies in the Comprehensive Plan, which among other items had express objectives to maintain and upgrade the characters of existing residential neighborhoods and encourage new residential development to approximate existing residential densities (Objectives HSG 1 and HSG 2).

When the Examiner reviews the complete record of the pending application, the neighborhood is confident that he will come to the same conclusion as in the

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initial *Somerset II* development, that the Applicant failed in its burden to show that the Planned Development involving extremely tall townhouse units on extremely small substandard lots in a primarily low-density, single-family, residential neighborhood meets the legal criteria under the Selah Municipal Code. In fact, the Teskes would submit, based upon the application itself and the partially as-built environment, that the Torkelson development under construction is even more inconsistent with the required criteria and character of the neighborhood. He is proposing a residential density of over 12 (48 lots on 3.97 acres) with an average lot size around 3,000 square feet, where the minimum lot size under existing zoning is 9,000 to 21,780 square foot lots depending on the lot slope. The entire 48-unit development is being proposed to be served by a 20-foot, private, paved road with steep slopes that intersect Goodlander Road with site distance issues. Finally, almost none of the normal development criteria for residential development are being met (setbacks, lot size, impervious coverage, service by private street, et cetera). The Torkelson's plat could not legally be approved under existing zoning.

The maps, pictures and as-built environment should clearly demonstrate to the Examiner that what is being proposed is a mini, view blocking, non-owner occupied, townhouse city completely inconsistent with the surrounding neighborhood that is designed for one purpose – and one purpose only – to allow the Applicant to monetize its property and maximize the number of rental units it can erect on the property. This was not what Selah's Planned Development ordinance is or should be used for as the Examiner clearly recognized in the *Somerset II* decision.

As a procedural side note and as the Examiner is aware, the original developer in *Somerset II* actually appears to have withdrawn the original planned development rejected by the Examiner, and instead re-filed a substantially modified application as a conforming plat. Substantial changes to the project design were made to mitigate impacts on adjoining residential neighborhoods. In this case, however, not only is the developer unwilling to modify his 48-unit planned development, but he continues to take the position he is entitled to build it as a matter of right (whether as a Planned Development or Class 2 review), and continues to construct the same project up through and including the date of this hearing, daring the City or Examiner to stop him. Based on obvious compatibility conflicts and concerns, the Teskes and the entire neighborhood will be asking the Examiner to make a recommendation to deny or impose conditions designed to mitigate compatibility conflicts, both of which will require portions of the as-built development to be torn down. The Selah City

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Attorney, Bob Noe, has represented that he advised the City and Applicant that the Applicant is "building at his own risk."

III. Legal Analysis

As their March 30, 2015, comment letter and opposition in the related short plats and variance application will attest, the Teskes' clear position is the ill-conceived Whispering View Estates development should not be allowed (whether as a Planned Development or incrementally through a Class 2 Use Application). Because of the direct and adverse impacts of this proposed development on their home and its inconsistency with the lot size, aesthetics, density and character of the surrounding neighborhood, the project should be denied. They believe no consideration should be given to the construction already undertaken by the Applicant at its own risk, and believe that current construction efforts and building permit applications also have failed to meet adopted development standards. There are no mitigation measures which can lessen the impacts on the surrounding R-1 zoned neighborhood. Simply stated, 48 view-obscuring townhouses designed for rental – as opposed to owner-occupied – use, served by a small, private street flowing onto a substandard arterial (Goodlander Road) fails to meet development standards, and should be denied.

A. <u>Procedural Defects</u>.

While the record in the pending application is still being developed, the Teskes and those opposed to this development believe there are multiple procedural defects with the pending application that should result in its summary denial, or even refusal to process, including but not limited to (1) the application was **not** signed by the Property Owner, but only the Applicant, and a complete application should have been resubmitted after the Applicant acquired the property (*see,* SMC 10.24.010(1) and SMC 10.40.030(2)); (2) similar to the defects in *Somerset II*, the procedural requirements for complete planned development and rezone applications have not been met for a preliminary or final development plan, which is critical for the Examiner, City and neighborhood to fully evaluate the impacts of the proposal (*see,* SMC 10.24.030-050, SMC 21.05.050); (3) environmental review has been improperly postponed, late and inadequate, and the City and Applicant have failed to demonstrate prima facia compliance with the procedural aspects of SEPA (*see,* SMC 11.40.050, SMC 11.40.065 and SMC 11.40.310); (4) the City has improperly issued building

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permits without upfront environmental review in violation of SEPA policies and procedures, including requirements that environmental review of significant developments be conducted up front instead of deferred for later review (*see, e.g.*, WAC 197-11-060(4)(d); *see also, King Cnty. v. Washington State Boundary Review Bd. For King Cnty.*, 122 Wn.2d 648, 662-63, 860 P.2d 1024, 1032 (1993)); (5) grading permits and environmental review under SEPA should have been required for excavation for greater than 500 cubic yards of soil (*see,* SMC 11.40.110(a)&(e) and WAC 197-11-800(1)b) … it appears the Applicant and Owner has cut and filled substantial amounts of soil for the road in preparation of a development without the required grading and excavation permits; and (6) there may be one or more defects in required notifications to adjoining landowners (the Teskes did not receive timely original notification of the March 10, 2015 Amended Notice of Development application apparently because of a mistake in a list provided by the County to the City of Selah, and the neighbors and neighborhood never received any notices of a prior rezone of the property from R-1 to R-2 years ago which purported to change to the development standards applicable to the property, and required notice of environmental determinations relating to the project may not have been made).

In this case, the Applicant's development documents are missing many of the same materials as the application denied in *Somerset II*, and the City should withhold any required notice of completeness, or the Examiner should recommend denial until the information is provided. As the Examiner noted, the specific elements of the required planned development plan and program cannot be read to be superfluous, and applicants must provide the City with **all** of the items set forth in SMC 10.24.030 and 10.24.050. A partial application is not good enough and the City should not be required to process a Planned Development proposal where program elements are missing. Similar to *Somerset II*, it appears materials in the record on the current application are completely missing, regarding:

- open-space adequacy and protection;
- preliminary plans, elevations of typical buildings and structures, including general height, bulk, number of dwelling units, and the exterior appearance of the buildings or structures;
- approximate location, height, and materials of all walls, fences and screens;
- a statement of the goals and objectives, i.e., **why it would be in the public interest and be consistent with the Comprehensive Plan**; and
- restrictive covenants.

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As the Examiner properly noted, without all information and elements, substantial conformance with the Comprehensive Plan (which is an express criteria in both the planned development and rezone ordinance), cannot be determined. In the present case, the City should not process the application and set a public hearing until it confirms that all information is complete, that all environmental information and documents have been submitted **after** receiving a properly completed application signed by the Property Owner. In this case, the City seems to be processing an outdated, old, incomplete January 2014 application that was signed by the Applicant only or one that was materially modified without new notices to interested parties. The fact that the Applicant ultimately acquired the property does not cure this jurisdictional procedural defect.

B. <u>The Application Fails to Meet the Rezone Criteria</u>.

In his *Somerset II* decision, the Examiner analyzed whether rezones to the Planned Development (PD) zone required compliance with the criteria for rezones set forth in SMC 10.40.050(c), the criteria set forth in Selah's Planned Development ordinance (10.24.060), or both. Until and unless the relevant provisions of the Selah Municipal Code are amended by the City Council, it is clear that **both sets of standards must be satisfied with the rezones of Planned Developments.**

As noted in his *Somerset II* decision, the Examiner and City are required to give provisions in the zoning ordinance effect based upon their plain meaning (*Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (Wash. 2002). City staff appropriately has given the rezone, plat and environmental review separate numbers, and the City historically has reviewed Planned Development applications using both criteria (*see, e.g.*, Somerset II and *Torkelson Constr., Inc. v. S. Selah Neighborhood Ass'n* (2005)). While as the Examiner noted, there are significant overlap between the criteria, the City's rezone criteria includes some additional required and very important items when a developer seeks to change the character of the neighborhood, including (1) a requirement to show the **public need** for the proposed change; (2) whether **substantial changes in circumstances** exist to warrant the amendment; and (3) the **suitability of the property** in question for uses permitted under the proposed zoning (*see,* SMC 10.40.050(c)(3),(4)&(7)). These additional criteria are important because of the rezone applicant's burden to show compliance with **all** applicable criteria using substantial evidence, whether it be major or minor. *Henderson v. Kittitas Cnty.*, 124 Wn. App. 747, 845, 100 P.3d 842 (2004).

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In addition to putting the burden to justify a rezone squarely on the Applicant, courts evaluating rezones require compliance with the following general principles:

(1) there is no presumption of the validity favoring the action of rezoning;

(2) the proponents of the rezone have the burden of proof in demonstrating that conditions have substantially changed since the original rezoning; [and]

(3) the rezone must bear a substantial relationship to the public health, safety, morals or welfare.

Ahmanne-Yamane, LLC v. Tabler, 105 Wn. App. 103, 111, 19 P.3d 436 (2001); *Bjarnson v. Kitsap Cnty.*, 78 Wn. App. 840, 845, 899 P.2d 1290 (1995); and *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573, P.2d 359 (1978).

While some jurisdictions and case law have softened the requirement to show changed circumstances where an application clearly is consistent with the Comprehensive Plan (*see, e.g.*, *Save Our Rural Environment v. Snohomish Cnty.*, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983)), the City of Selah, through its zoning ordinance and history have failed to do so. The Selah Municipal Code clearly requires an applicant to show a substantial change in circumstances to warrant amendment to the current designation or zone (SMC 10.40.050(c)(4)). In fact, Council for the City of Selah previously has argued in Superior Court for Yakima County, that a showing of changed circumstances is "pivotal" and contemplates a showing of a change in the nature of area and how nearby properties are being put to use. *In re Matson Fruit Company v. City of Selah*, Yakima Superior Court Cause No. 07-2-04502-2 and *S. Selah Neighborhood Ass'n v. City of Selah*, Yakima County Superior Cause No. 05-2-03370-2. In the present case, the record will show absolutely no substantial change in circumstances in the area surrounding the proposed Whispering View Estates development that has now been improperly started by the Applicant. The uncontroverted testimony and evidence at the hearing will be that the area in and around the property remains R-1 zoned, suitable for low-density, residential development. As the Examiner noted in *Somerset II*, whether for a lack of changed circumstances under the rezone criteria or a failure to demonstrate Comp Plan consistency and harmony with the surrounding area under the Planned Development criteria, dense plats inconsistent with the neighborhood that do not meet normal development standards should be denied.

Selah's Planned Development zone and zoning provisions were not designed to circumvent the normal platting and development standards for dense, single-family developments. In an R-2 zone, all that this Applicant is entitled to do outright on the

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property is to build a single duplex unit on each of its remaining seven undeveloped lots (there is already a single-family residence on one of the lots). The Applicant has chosen to start construction of single-family and multi-family (not duplex) townhouse units at locations which prevent the private road from being expanded to a public street, and seems to assume that someday it is going to be able to build a development similar to the one proposed. The Applicant clearly is building "at its own risk" and neither the City nor the Examiner is under any obligation to take into consideration the as-built environment of the property, which may be illegal in any event. A simple review of the map and the pictures of what the development will look like (whether the units are physically connected or not) – if it is allowed at full build out – looks like a dense, separate townhouse city sandwiched between the community's high school and high quality, low-density, single-family, residental development. Such a development would epitomize an illegal spot zone.

Washington courts have long condemned "spot zoning". *Smith v. Skagit Cnty.*, 75 Wn.2d 715, 743, 453 P.2d 832 (1969); *Save the Neighborhood Environment v. City of Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984); and *Chrobuck v. Snohomish Cnty.*, 78 Wn.2d 858, 872, 480 P.2d 489 (1971). The illegal spot-zone concept stills survives case law today, even post-Washington's Growth Management Act. However, as will be set forth below, a proper application of the City's rezone and Planned Development criteria would essentially require the denial of the current application and are designed to prevent illegal spot zones from happening. Again, the Examiner recognized this concept in denying the *Somerset II* development when he stated that Planned Development review is not merely a matter of ensuring the proposal meets the limitations on maximum density, and a developer's desire the maximize density to the detriment of surrounding neighborhood does not meet the Applicant's burden.

Taking the eight required rezone criteria set forth in SMC 10.40.050(c) in order, the Teskes' and neighborhood's position is as follows:

(1) The proposed rezone is inconsistent with and violates the goals and objectives of the Comprehensive Plan in multiple respects, including failing to encourage economic growth (Objective LUGM 3), failing to upgrade the character of existing residential neighborhoods (Objective HSG 1), failing to encourage residential development to approximate existing residential densities and housing mix levels (Objective HSG 2), failing to minimize the negative impacts of medium-density projects on adjacent low-density residential areas (Objective HSG 3), and failing to

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encourage residential construction that is compatible with existing residential construction (Objective HSG 4). The average proposed lot size appears more than three times less than the minimum allowed in the current zone, and is probably ten times less than surrounding area. The density is not warranted, and the Applicant has made absolutely no showing that a higher density than allowed under the current R-2 zone should be approved based on the quality of project design, construction or amenities. To the contrary, the developer is proposing no amenities that would mitigate its impact on the surrounding area.

(2) The public facilities, especially the roads, are not adequate. A 20-foot private road is not designed to handle the 480 trips per day from a 48 unit development, and traffic impacts on Goodlander Road in violation GMA concurrency standards would be substantial.

(3) The Applicant has demonstrated no public need for the proposed zone change, and there is still plenty of R-1 and R-2 zoned land available for development in the City of Selah. The Applicant's private desire to maximize the number of non-owner occupied townhouse units he can cram onto one piece of property to make money is not a public purpose.

(4) There is no substantial change in circumstances that warrant amendment to the current R-2 zone. The surrounding area has not changed at all. The Applicant's road building and current construction efforts do not amount to changed circumstances, and there is nothing to prevent the Applicant from developing the property consistent with its current R-2 zoning designation.

(5) The testimony at the public hearing will be overwhelmingly against this proposal and will not amount to simple community displeasure, but will be based on legitimate compatibility concerns.

(6) A simple review of the development map with the aerial map of the area and a site visit will confirm that a 48-unit townhouse development next to high-quality, low-density, single-family homes are not compatible, and the owner/developer has consistently refused to even consider mitigation measures, including site screening, blended-density, height restrictions, et cetera.

(7) The R-2 zoned property is entirely suitable for R-2 type duplex development, or if the Applicant chooses (as it appears to have done), it could easily build one, single-family house on each lot. There is simply no need to change the zone, other than the Owner/Applicant's desire to improve the income-generating capacity of the property it recently bought.

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(8) While a planning staff report has not been provided, it is hoped that the City Planning Staff will recommend denial consistent with the *Somerset II* decision. It would also be hoped and assumed that the City Public Works Department would have significant concerns about whether or not the development meets development criteria, including the normal requirement that plats be served by City streets, and that traffic impacts meet GMA concurrency requirements (RCW 36.70A.070(6)(b)). The adjoining property owners believe that Goodlander Road does not meet concurrency requirements, and there has been no demonstration by the Applicant or City that transportation improvements sufficient to handle all traffic from the proposed development will be in place, financed and completed by the time the project is built. There are no curbs, gutters, sidewalks, or bus stops proposed on the north side of Goodlander Road. Site distance issues exist at the intersection between the private road and Goodlander Road, and there are no left turn lanes proposed for Goodlander, due to right-of-way acquisition problems.

In summary, this Applicant will have difficulty demonstrating that any substantial evidence exists to meet any of the eight rezone criteria. The burden is not on the neighbors like the Teskes to prevent improper change to their neighborhood, but is squarely on the Applicant and, ultimately, the City Council to show that substantial evidence exists to meet all eight rezone criteria to prevent an illegal spot zone. This application is even a more egregious example than *Somerset II* of an application that should be summarily denied because it is simply based on an owner/applicant's desire to maximize density on property to the detriment of the surrounding neighborhood.

C. <u>The Application Fails to Meet the Purpose and Criteria of Selah's Planned Development Zoning District</u>.

The proposed application also fails to meet the stated purpose and development criteria set forth in Selah's Planned Development zoning provisions (SMC 10.24, et seq.). The stated purpose of the Planned Development zone is to allow new development "consistent with the Comprehensive Plan" that would "encourage flexibility and design and developments that are architecturally environmentally innovative, that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable utilization of land than is possible through strict application of zoning and subdivision controls ...". SMC 10.24.010(1). **There is nothing architecturally and environmentally**

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innovative at all about the proposed use of the land. This is simply another attempt by a well-known Selah developer, whose speciality is non-owner occupied, dense, townhouse-type developments to maximize the number of units that can be squished on a piece of property to the detriment of neighbors. There is no creative use of open space, no creative use of restrictive covenants, no design provisions desired to blend the development with the surrounding neighborhood. To the contrary, for monetary gain, the Owner/Applicant simply wants to build as many units as cheap as possible to improve the rate of economic return on its property. As the Examiner noted in *Somerset II*, this is not the "economic growth" contemplated by Selah's Comprehensive Plan objectives.

Turning to the six criteria set forth in SMC 10.24.060, almost none of the criteria for approval can be met on this record, and the neighborhood's position is that Planned Development should be denied for the following reasons:

(1) **It does not conform to the City of Selah Urban Growth Area Comprehensive Plan** for the reasons outlined on Pages 13 and 14 above, including failure to maintain the character of existing residential neighborhoods and failure to encourage residential development that approximates existing residential densities (Objectives HSG 1-4) and because of the extremely small, average lot size in comparison to the lots allowed under the current R-2 zone, not to mention those in the surrounding area;

(2) **The proposal is not in harmony with the surrounding area** or its potential future use because of the number of units, smaller lot sizes, substandard streets, substandard setbacks, and the tall box-like townhouse structures which simply do not fit in the neighborhood;

(3) **Open space is inadequate.** The extreme number of units simply eats up all the open space near adjoining residential homes, and while two tracts (Tract A and B) are proposed for parks, no information has been provided on how the open space will be developed, preserved and maintained. In reality, the open spaces look like steep areas that the developer simply cannot build on. The proposed open space may be available for the private benefit of the renters of the units, but will not mitigate the impacts to the surrounding neighborhood and public. It is highly likely that a development this dense with this many units will simply increase the utilization of the open space and parks on the City high school and Carlon Park.

(4) **Public facilities and roads are inadequate.** Similar to the recently denied *Somerset II* development, the property simply is not large enough to allow

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nonconforming private streets to serve this many units. While the City implicitly determined that a private road could serve 15 units, it certainly did not determine that it was sufficient to serve 48. Contrary to the MDNS and traffic study, the use of the smallest private road possible should not have been evaluated based on "could it work," but "should it be allowed" as an exception to the City's normal requirements for city streets? This project should be denied, but even if approved, public streets meeting development standards should be required, which would have the indirect effect of reducing densities significantly.

(5) **The application does not comply with normal subdivision standards,** and similar to *Somerset II*, there is no showing of good cause as to why this Planned Development should be allowed to violate them. By definition, the application does not meet the requirement that plats be served by City streets. Proposed setbacks, impervious coverage, lot size and open space requirements all are inconsistent with what a normal R-1 or R-2 development would allow. As the Examiner noted, good cause is not necessarily the Applicant's own desire to maximize the number of units allowed under the Comprehensive Plan – in this case, twelve dwelling units per net residential acre – and all the other requirements for rezones and Planned Developments must still be met. There is nothing unique about the shape, size, configuration of the lots that warrant substantial deviation from residential subdivision standards and Selah's Planned Development ordinance should not be used by developers to take shortcuts from such standards which are designed to ensure the public health, safety and welfare, and compatibility with surrounding neighborhoods. The City Council finally recognized this when Council recently suspended the use of the Planned Development zone pending legislative changes.

(6) For the reasons stated above, the application does not comply with the Planned Development chapter, including procedural deficiencies relating to information required in 10.24.030 and 10.24.050, and a substantive failure to meet the other criteria set forth above.

IV. Conclusion

For the above-stated reasons, the Teskes and the entire surrounding neighborhood respectfully request that the application be summarily denied, and that current or in-progress buildings be reviewed for compliance with Selah's building permit and development standards, including slopes, grading and excavating permits,

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Yakima, WA 98907
509.248.6030

cut-and-fills, setbacks, et cetera. From a practical and legal standpoint, this application is ridiculous. Other than being right at the maximum gross density allowed under the Comprehensive Plan, it fails almost every other stated development criteria for Planned Development zones and plats in Selah's zoning ordinance. In this case, the Applicant is free to put a duplex on each vacant lot, but seems to have chosen to erect one single-family townhouse unit on each of the vacant lots in anticipation of future approval of its Planned Development rezone and plat (or an incorrect assumption he can build the same project by connecting townhouses through a series of Class 2 reviews). Any approval of this project would clearly be illegal. The Applicant has not met its burden of proof, and the Examiner should recommend denial consistent with the ruling in the *Somerset II* case, and because of obvious compatibility conflicts with the neighborhood.

RESPECTFULLY SUBMITTED this 28th day of July, 2015.

Halverson Northwest Law Group P.C.

By: Mark E. Fickes

Mark E. Fickes, WSBA #17427

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405 East Lincoln Ave. | P.O. Box 22550
Yakima, WA 98907
509.248.6030

Exhibit A

FILE# 7859313
YAKIMA COUNTY, WA
12/24/2014 10:21:51AM
DEED
PAGES: 3
SIMPLIFILE
FIRST AMERICAN TITLE
Recording Fee: $74.00

AFTER RECORDING MAIL TO:

Carl L. Torkelson and Candi R. Torkelson
P.O. Box 292
Selah, WA 98942

YAKIMA COUNTY EXCISE TAX
DATE: 12/24/2014
PAID: $6,431.00
REC. NO. E005900
BY: SHANNA W.
Yakima County Treasurer's Office

Filed for Record at Request of:
First American Title Insurance Company

Space above this line for Recorders use only

STATUTORY WARRANTY DEED

File No: **4431-2354358 (MC)** Date: **December 19, 2014**

Grantor(s): **Danny O. Bowers and Patricia G. Bowers and Danny O. Bowers and Patricia F. Bowers, Trustees of the Bowers Family Holding Trust**
Grantee(s): **Carl L. Torkelson and Candi R. Torkelson**
Abbreviated Legal: **LOTS 1B, 2B, 3B & 4B, SHORT PLAT, REC. 7855130 AND LOTS 1A, 3A & 4A, SHORT PLAT, REC. 7855129, YAKIMA COUNTY**
Additional Legal on page:
Assessor's Tax Parcel No(s): **181425-33419, 181425-33421, 181425-33422, 181425-33423, 181425-33424, 181425-33425, 181425-33426**

THE GRANTOR(S) DANNY O. BOWERS AND PATRICIA G. BOWERS, HUSBAND AND WIFE, AS TO PARCEL A AND DANNY O. BOWERS AND PATRICIA G. BOWERS, TRUSTEES OF THE BOWERS FAMILY HOLDING TRUST, DATED JULY 1, 2012, AS TO PARCEL B for and in consideration of **Ten Dollars and other Good and Valuable Consideration,** in hand paid, conveys, and warrants to **Carl L. Torkelson and Candi R. Torkelson, husband and wife,** the following described real estate, situated in the County of **Yakima,** State of **Washington.**

LEGAL DESCRIPTION: Real property in the County of Yakima, State of Washington, described as follows:

PARCEL A:

LOTS 1B, 2B, 3B AND 4B OF SHORT PLAT, RECORDED NOVEMBER 07, 2014 UNDER RECORDING NO. 7855130, RECORDS OF YAKIMA COUNTY, WASHINGTON.

PARCEL B:

LOTS 1A, 3A AND 4A OF SHORT PLAT, RECORDED NOVEMBER 07, 2014 UNDER RECORDING NO. 7855129, RECORDS OF YAKIMA COUNTY, WASHINGTON.

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

Danny O. Bowers

Patricia G. Bowers

Bowers Family Holding Trust

Danny O Bowers, Trustee

Patricia G Bowers, Trustee

STATE OF Washington)
)-ss
COUNTY OF Yakima)

I certify that I know or have satisfactory evidence that **Danny O. Bowers and Patricia G. Bowers**, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: December 27, 2014

Michael L. Christianson
Notary Public in and for the State of Washington
Residing at: Yakima
My appointment expires: 1/7/16

Notary Public
State of Washington
MICHAEL L CHRISTIANSON
MY COMMISSION EXPIRES
January 07, 2016

STATE OF Washington)
)-ss
COUNTY OF Yakima)

I certify that I know or have satisfactory evidence that **Danny O. Bowers and Patricia G. Bowers**, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they is/are authorized to execute the instrument and acknowledged it as the **Trustees of Bowers Family Holding Trust** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: December 23, 2014

Michael L. Christianson
Notary Public in and for the State of Washington
Residing at: Yakima
My appointment expires: 1/7/16

Notary Public
State of Washington
MICHAEL L CHRISTIANSON
MY COMMISSION EXPIRES
January 07, 2016

Exhibit B

CITY OF SELAH

Public Works Department
222 South Rushmore Road
SELAH, WASHINGTON 98942

Phone 509-698-7365
Fax 509-698-7372

DATE:	May 29, 2015
TO:	Property Owners within 600 feet of Development Proposal and Agencies
FROM:	Donald C. Wayman, City Administrator
SUBJECT:	Notice of Intent to Approve a Class 2 Use

CITY OF SELAH
NOTICE OF DEVELOPMENT APPLICATION
AND OPPORTUNITY TO PROVIDE COMMENTS
FILE NOS.: 926.62.15-01

NOTICE OF PROPOSAL: On May 19, 2015 the City of Selah Planning Department received a Class 2 Use Application from Torkelson Construction, Inc. for a multiple family residential development consisting of a six-plex by attaching an existing single family dwelling to five additional units. Access is proposed from Bowers Drive, an existing private access road which is to be extended as a "temporary fire turnaround" to the east fronting the proposed development.

The site is located at the north end of Bowers Drive about 550 feet north of East Goodlander Road consisting of Parcel 181425-33426. The property is zoned Two-Family Residential (R-2), and designated Medium Density Residential by the Comprehensive Plan. The proposed project meets the maximum residential density of 12 units per acre. The site is also part of a pending application for Planned Development and Preliminary Plat that proposes a different building and lot configuration than that proposed by this application.

The application was determined complete for processing on May 27, 2015. The final decision on this application will be made within 120 days of the determination of complete application.

ENVIRONMENTAL REVIEW: The City of Selah is the lead agency for this proposal under the State Environmental Policy Act (SEPA). A project consisting of six dwelling units, parking for fewer than 40 vehicles, and less than 500 cubic yards of fill or excavation is categorically exempt from SEPA review under SMC 11.40.110. However, the proposal is part of a larger project consisting of a series of actions, both exempt and non-exempt and for which environmental review is now being conducted. The proposed action is being allowed to proceed under the conditions set forth below because in accordance with the requirements of WAC 197-11-305(1)(b) the following criteria are being met (WAC 197-11-050):

a. This proposal by itself does not have an adverse environmental impact provided that no additional multiple-family units shall be developed on any part of the property that is subject to the currently on-going environmental review until after it is completed.

b. This proposal does not limit the choice of reasonable alternatives. As a class 2 use, multiple family residential developments are generally permitted in the R-2 zone provided that the density does not exceed 12 dwelling units per acre. As proposed, the application conforms to zoning ordinance development standards.

AVAILABILITY OF INFORMATION: The project file containing the application, project description, site plan and other information is available for public inspection at the Planning Department, 222 South Rushmore Road, Selah, WA.

REQUEST FOR WRITTEN COMMENTS ON THE PROPOSAL: Your views on the project are welcome. All written comments concerning the project will be accepted during the 14-day comment period that ends Friday, June 12 , 2015 at 5:00 P.M. Be sure to reference File No. 926.45.15-02 or Torkelson Construction in any correspondence. Please mail comments to the Planning Department, 222 South Rushmore Road, Selah, WA 98942, FAX Comments to (509) 698-7372 or email to tdurant@ci.selah.wa.us.

NOTICE OF DECISION: After the end of the comment period, the Administrative Official will review all comments received and issue a final Class 2 Use decision. A copy of the decision will be mailed to the proponent and all persons who submitted written comments. The final administrative decision may be appealed to the Selah City Council. The deadline for filing an appeal will be identified in the final decision. An appeal must consist of a written notice of appeal and appropriate appeal fee and should contain specific factual objections. Please call the Planning Department at 698-7365 to read or ask about appeal procedures.

HALVERSON | NORTHWEST
LAW GROUP

Raymond G. Alexander
Adam K. Anderson
Alan D. Campbell
J. Jay Carroll
James S. Elliott
Robert N. Faber
Mark E. Fickes
Carter L. Fjeld
Frederick N. Halverson+
Paul E. Hart+
Kellen J. Holgate
Lawrence E. Martin*
Terry C. Schmalz+
Linda A. Sellers
Michael F. Shinn
Sara L. Watkins*
Stephen R. Winfree

*Also Oregon Bar Member
+Of Counsel

June 10, 2015

VIA HAND DELIVERY

City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
Attention: Donald C. Wayman, City Administrator
222 Rushmore Road
Selah WA 98942

Re: Our Client: Helen and John Teske
Matter: Comments Opposing and Requesting Denial of Torkelson's Application for Class 2 Review (File No. 926.62.15-01 and/or 926.45.15-02)

Dear Mr. Durant and Mr. Wayman:

As the City is aware, our office represents one of the residential home owners most directly affected by the proposed Torkelson development, John and Helen Teske, who reside at 182 Lancaster Road in Selah, Washington. The Teskes were surprised and disappointed to see that the City has decided to process a Class 2 Use Application in an attempt to build what, fundamentally, is the same 48-unit townhouse development, while Torkelson's rezone and planned development application still is pending. This decision increases the complexity, expense to City and neighbors, and could result in inconsistent decisions and results. For the reasons which will be outlined in this letter, the Teskes and others in the neighborhood believe this new application is procedurally and substantively defective, and should be denied, postponed, or at the very least, the administrative official should allow the application to be reviewed at an open public hearing before the Examiner, consolidating the processing of what is, essentially, the same incompatible development.

The Teskes' continuing position is the rezone, planned development and Class 2 Use to build as many view-obscuring townhouses as Torkelson can erect on his lots to the detriment of the neighbors is procedurally and substantively defective, and should be denied. Attached to this letter as Exhibit A are the Teskes' written comments opposing the Whispering View Estates planned development, dated March 29, March 30, and June 10, 2015. The same procedural defects, environmental impacts and compatibility issues are present in the Class 2 Application which require its denial.

Procedurally, this applicant is making a mockery of the City of Selah zoning ordinance, Planning Department, and possibly the reviewing official. The applicant obviously feels emboldened by a similar 24-unit development in South Selah that resulted in years of litigation between the City, the neighborhood and the applicant. However, there are procedural and compatibility differences in this larger, denser development next to the high school and low-density R-1 development, which should result in its denial. An aesthetic or non-functional closet connection should not magically turn six, free-standing, single-family buildings into a "multi-family dwelling" as defined in the City's

zoning ordinance (or at least it should not under any reasonable interpretation designed to protect Selah's residential neighborhoods). Based on the Site Plan attached to the Class 2 Notice, it is the Teskes' position that the proposed 6-plex is not an "apartment" or "multi-family dwelling" which is even entitled to Class 2 review, but is simply an illegal attempt by the applicant to put six separate townhouses on one lot, in an almost identical configuration to its pending planned development (requiring environmental review, a rezone and plat, as it should).

Even if the City elects to process this questionable Class 2 Use Application, it should be denied, conditioned or changed for obvious compatibility reasons. **Class 2 uses are not allowed outright.** Selah Municipal Code recognizes that a Class 2 use may be incompatible at a particular location. **If a Class 2 application cannot be adequately conditioned, it shall be denied.** SMC 10.06.020. The reviewing official (or, in this case, as will be outlined below), the examiner or planning commission – after a public hearing – has "broad authority" to impose special conditions or, ultimately, deny incompatible Class 2 Use Applications. *See,* SMC 10.06.060(a) and (b). If cramming 48 townhouse units on four acres across from the high school, next to high-quality, low-density, residential zones cannot meet the criteria for a rezone, plat and planned development, the same project should be denied for compatibility concerns by the reviewing official where it has, functionally, the same footprint and impacts on the neighborhood.

The applicant's attempt at bifurcated processing of multiple applications for substantially the same development are putting burdens on the City and neighborhood that should not be allowed. The submittal of the Class 2 Use Application seems to be an admission from this applicant that the chance of success on the rezone and planned development are slim, following completion of appropriate SEPA review for the development (which is still pending). After receiving notice of the public hearing, the Teskes will be filing a legal brief demonstrating that the 48-unit planned development does not meet the legal criteria and is incompatible with the neighborhood for many of the same reasons the Examiner recommended denial (and the Council accepted the Examiner's recommendation) for the Somerset II development (See File Nos. 912.42.14-05 and 94.42.14-04). In fact, before making any decision, the Teskes would specifically request the reviewing official and/or the Examiner or Planning Commission (who should be making this decision) specifically review the Examiner's written recommendation in the Somerset II case, which demonstrates why dense townhouse developments on small lots are inconsistent with low-density residential neighborhoods. For convenience, a true and correct copy of the Examiner's Decision is attached to this letter as Exhibit B.

Before summarizing additional reasons why the Torkelson's Class 2 Application should be denied, the Teskes are asking the current City Manager, acting as the reviewing official, Mr. Don Wayman, to exercise his express authority to refer this Class 2 Application to the Hearing Examiner under SMC 10.06.040(6), and that its processing be consolidated with the applicant's rezone application and plat for substantially the

same development. Because he lives in the Torkelson development under review, the reviewing official, Don Wayman, also should legally be precluded from making a decision on the Torkelson Class 2 Application because of potential violations of Washington's Appearance of Fairness Doctrine RCW 42.36, et seq.

Procedural Defects and Request for Consolidated Processing

It is clear from the applicant's Class 2 Application (and the City's own notice) that Torkelson's goal is to build 48 townhouse units on the property he recently bought from the Bowers family, whether done at once through a planned development, plat and rezone, or done through eight Class 2 Applications (trying to connect six or more separate, single-family townhouses together on his eight lots). The results and impact on the neighborhood are the same. There already is a quasi-judicial process started and initiated by this applicant, which actually is the proper way to process such a large, dense development. Even if there is not a legal impediment to a single applicant processing two applications on the same property at the same time, the reviewing official should simply exercise his express authority under the municipal code to refer the Class 2 Application to the Examiner for purposes of conducting a public hearing and rendering a decision on the proposal, unless the reviewing official is prepared to deny the Application outright. *See,* SMC 10.06.040(6)(e).

Our clients (and the neighborhood) believe that referral to the Examiner for decision making authority is required by Washington's Appearance of Fairness Doctrine, because it would be inappropriate for Selah's administrative official (Don Wayman) to make a decision directly involving the development and home which he lives. Based on information and belief, Mr. Wayman currently resides in one of the Torkelson townhouse units already constructed on the property, and his landlord is, in fact, the applicant. In order to maintain the integrity of the Class 2 review process, referring the Class 2 Application for consolidated processing by the Examiner is the only proper result.

No action should be taken on the Class 2 Application before the almost identical application for a rezone and plat is processed. Any process or decision on the Class 2 Use Application should be referred to the Hearing Examiner for purpose of conducting a public hearing, and rendering a decision on a proposal with the obvious compatibility impacts of Torkelson's Whispering View Estates project.

The Torkelson Class 2 Application Should be Denied.

First, the Application should not be processed because the development as proposed does not meet the definition of a multi-family dwelling under the Selah zoning ordinance. *See,* Appendix A to SMC. A multi-family dwelling by definition is limited to a "single building." Connecting six separate townhouse residences by a non-structural closet with no shared common walls does not change this fact. The owner/developer knows he cannot put six separate single-family homes on one lot, so he proposes to connect them with a cheap, non-functional closet connection for the sole purpose of

circumventing restrictions in the zoning code. In a 2009 ruling by the Yakima County Superior Court where this same developer made the same argument, the Court determined that connecting what otherwise were free-standing, single-family townhouse structures by an overhang did not turn them into "multi-family dwellings" under Selah's zoning code when the Court held:

> "Buildings were connected by a non-structural causeway that appears cosmetic and has no structural utility. The connecting artifice serves no structural purpose or utility and is not designed to improve liveability of the separate building."

A copy of Judge Hackett's January 9, 2009, ruling is attached as Exhibit C for the reviewing official's and the Hearing Examiner's review.

The Application as presented does not meet the standards for Class 2 review approval and should be denied by the reviewing official. Torkelson's new Class 2 Use Application obviously will be "Phase I" of the Whispering View Estates project. In other words, what this developer clearly is trying to do – if and when his planned development and rezone is denied (which it should be) – is simply asking the City to approve a Class 2 review for six units on each of the same eight lots, constructing the same development in phases, where the only difference is connecting the single-family townhouses with the non-structural closet connections. The compatibility, cosmetic, traffic and environmental impacts are all the same. To quote an overused, but appropriate expression, even with "lipstick," the project is still a "pig."

Selah's municipal code recognizes the Class 2 uses may be incompatible at a particular location, and if they cannot be adequately conditioned, they shall be denied. SMC 10.06.020. This is clearly the case with Mr. Torkelson's latest attempt to maximize the number of townhouse units that can be squished onto a piece of property he owns. **Under the Selah Municipal Code, the reviewing official deciding Class 2 review applications must make specific written findings that "the present and future needs of the community will be adequately served by the proposed development, and the community as a whole will be benefitted rather than injured."** SMC 10.06.040(8)(A).

The official (and/or the Examiner in this case) also has the power to deny the application or impose conditions to comply with development criteria, to mitigate material impacts, to ensure compatibility of the development with existing neighboring land uses, and adjoining districts, and to ensure that structures and areas are surfaced, arranged and screened in such a manner to be compatible and not detrimental to the neighborhood, and achieve the intents and goals of the Comprehensive Plan. *See,* SMC 10.06.060(a). These general criteria are similar in nature to what Torkelson must show to have a rezone or planned development approved. If provided an opportunity to present information and evidence at a hearing, the Teskes and surrounding residential home owners will be able to clearly demonstrate the following:

(1) The proposal is not compatible and not in harmony with the surrounding area because it allows way too many units (in this case, six units on a 23,000 square foot lot), it blocks the view and the units tower over adjoining residences, its development is served by substandard streets, and the box-like townhouse structures specifically designed for non-owner occupied use simply do not fit in with the neighborhood at the requested density and design;

(2) The proposed development violates many goals and objectives of the Comprehensive Plan, including failure to encourage economic growth (Objective LUGM 3), failure to upgrade the character of existing residential neighborhoods (Objective HSG 1), and failure to encourage residential development to approximate existing residential densities and housing mix levels (Objective HSG 2);

(3) The public facilities and roads are inadequate, as dense development such as the one proposed should be served by public streets, not substandard private roads, and at its obviously intended full build-out, road improvements along Goodlander will not be adequate, including sidewalks, bus stops and the lack of a turning lane; and

(4) Present and future needs of the community (which includes the surrounding neighborhood) will not be adequately served by the development, and the community as a whole will be harmed rather than benefited, in express contradiction to the required finding to approve a Class 2 review. *See* SMC 10.06.040(8)(A).

The Teskes and the neighborhood believe a development of this size should not be served by a 20-foot private road on a 26-foot easement. They do not understand why the City of Selah's Public Works Department does not feel the same. The City subdivision ordinance has an express provision that normally requires each and every lot to be served by a city street, which would require 50 feet of right-of-way and 32 feet of paved surface, in addition to other improvements. **This developer received a variance only to serve an 8-lot short plat with a maximum of 15 or 16 units (*See*, City of Selah File No. 913.45.14-04).** At that time, City council had reservations as to whether or not such a small private road was suitable to serve even eight lots. The record is clear that the variance granted by the City was not approved to serve a 48-unit townhouse city, which is now being proposed.

The applicant's proposal – even for a Class 2 review – should be reviewed in the context of a 48-unit townhouse development at full build out. If the City will not enforce and require city streets (with curbs, gutters, sidewalks and adequate room for on-street and off-street parking) in the context of a 48-unit townhouse development, it will set an unnecessary and unwarranted precedent that all developers will point to to avoid wider, more efficient (but more expensive) infrastructure improvements. Of course, if this

applicant had to meet normal road development standards (which were, in part, designed to protect and make developments more compatible with the surrounding neighborhoods), he could not put as many units on the property as proposed. This is why cities have subdivision and development standards.

Neither his plat nor a series of related Class 2 use applications should be approved without the requirement that he dedicate sufficient right-of-way to build a public street, now that his development intentions are known. Most developments even close to this size would have wider streets with at least two access points to a public road. Of course, Torkelson has made widening the road more difficult by building existing, single-family units that immediately abut the road. This should not matter, as the applicant himself has caused the problem. Whether it be roads, impervious surface, site screening or lot size, this developer and development seeks to maximize the number of units on his property to the detriment of the neighborhood. This is something the City of Selah and its normal development standards should be designed to protect against. This applicant is not entitled to what amounts to a second variance to serve a larger, denser, incompatible development by a private road.

In his application, the developer – and at times it seems the City – incorrectly states that multi-family dwellings consistent with density standards must be approved. This simply is not true for the reasons set forth above. As the Examiner and the City itself noted recently in the Somerset II decision, maximum densities allowed under the Comprehensive Plan are just that – maximum densities allowed, not targets; and developments that are not compatible with the Comprehensive Plan, neighboring land uses, or that do not otherwise meet the standards in the zoning ordinance should be denied.

This applicant has little hope of receiving approval of a rezone and planned development in light of the Somerset II decision, and because this even denser and more incompatible development fails to meet the review criteria. He should not be able to achieve the same results through a series of related Class 2 use applications. In this case, the City itself has admitted that this Class 2 Application is **"part of a larger project consisting of a series of actions ..."**. This is why an upfront environmental review should be completed, the Application should be reviewed and consolidated with the pending applications for a rezone and planned development and, ultimately, should be determined following an Examiner's recommendation and decision by the City Council. Development standards should be applied based on the whole project, not xi unit phases where the owner's intentions are clear. The reviewing official should not take any action contrary to the zoning code or which undercuts that ability of the adjoining property owners to have their concerns heard and considered by the ultimate decision-making authority – in this case, the City Council.

In this case, the City has elected to accept an application for a Class 2 review with a larger project and development application pending. The adjoining landowners, including the Teskes, believe this to be inappropriate. Contrary to the recitations in the

City's Notice, the proposal (a 6-unit, multi-family project) is, in reality, six, illegal, single-family residences connected by a non-structural artifice (one that does have adverse environmental impacts and does limit the choice of reasonable alternatives). If a Class 2 use was approved, Torkelson could, in essence, build in phases the same 48-unit dense development out of the exact same footprint that Council and the Examiner are likely to find inconsistent with the surrounding neighborhoods and Comp Plan when a decision on the plat and rezone are made. Such a result would be ridiculous.

It is a reviewing official's job to interpret and apply the zoning code in a fair and consistent manner. In this case, if the development fails as a rezone and plat, as a matter of law it should fail as a Class 2 review if the footprint and impacts on the adjoining, low-density, residential neighborhoods do not change.

This letter should be considered the initial comments on the Class 2 use proposal from the adjoining landowners and John and Helen Teske. The Class 2 Application should not have been accepted as complete under a reasonable interpretation of the zoning code. However, because it has been and because the City admits that it is a part of a larger project, any decision and processing of the Class 2 Use Application from Torkelson Construction should be referred to the Hearing Examiner to be processed with the pending rezone and plat.

Yours very truly,

HALVERSON NORTHWEST LAW GROUP P.C.

Mark E. Fickes

Mark E. Fickes

MEF:tia
Enclosures
CC with encl: Bob Noe, Selah City Attorney

EXHIBIT A

June 10, 2015

City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
222 Rushmore Road
Selah, WA 98942

RE: Comments on Class 2 use in R2 of the Torkelson project on Goodlander Road, File No. 926.45.15-02

Dear Mr Durant

We are asking you to deny the proposed Class 2 use of a lot currently zoned as R2 in the Torkelson proposed "Whispering View Estates" project on Goodlander Road. We oppose this Class 2 use in R2 on the grounds that this usage is entirely inconsistent with the surrounding neighborhood of mostly single family, owner occupied residences on approximately an acre of land. There has been no "change in condition" to warrant an apartment complex of this density in this area.

Please refer to our letter dated March 29, 2015 (see copy attached), with our objections to the Planned Development and rezone, as our objections are essentially the same.

We find it odd that another application has been submitted on a portion of the property, which is currently going through the normal rezone process under the Planned Development portion of the Selah Municipal Code. The developer appears to be trying to circumvent the public hearing process for his pending rezone application and plat by submitting a new application, basically attempting to accomplish the same end result on this lot next to our home. It's fairly obvious to us that if the PD application is rejected, he will attempt to use the Class 2 to get the same result as the rejected PD application.

Growth in Selah is a good thing, but it must be done responsibly. This Class 2 use is not responsible, is incompatible with our neighborhood, and would serve only the economic interests of the owner, to the detriment of the community as a whole. We urge you to deny this proposal.

Sincerely,

Helen G Teske

John H. Teske Jr
Helen G. Teske
182 Lancaster Road
Selah, WA 98942

March 29, 2015

City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
222 Rushmore Road
Selah, WA 98942

RE: Comments on Whispering View Estates Planned Development, Rezone and Environmental Review

Dear Mr Durant

Helen's parentsmoved from Yakima to Selah in about 1961, when she was about 2 years old. She has lived in Selah since then, in three different houses on Lancaster Road. Her parents, Harry and Joan Whitehead, moved to Selah because of the small town, family friendly, safe neighborhood, country feeling of this community. This has continued to be the case, until recently. What is driving our reconsideration of the quality of life in Selah is the Whispering View development currently under construction and currently under application to rezone from R2 to PD (Planned Development). If this rezone is approved, 48 units will be built on less than four acres of land on Goodlander Road, directly across from the entrance to the high school.

We're sure you have heard from many Selah residents opposing this rezone to PD on the grounds that this rezone is totally and completely inconsistent with the surrounding neighborhood of mostly single family, single story residences on approximately an acre of land. You have probably also heard arguments stating there has been no "change in condition" to warrant a development of this density in this area. These two points are true, and key to the legal arguments against granting this rezone.

Other arguments against this development, and others that may be attempted by developers in the future include traffic concerns, school inadequacies, safety issues within the development, as well as safety issues to the adjoining neighbors.

Speaking for those of us whose property adjoins the Torkelson property on Goodlander Road, another major concern is that nowhere in his plans or proposal is there any mention of how he intends to mitigate the noise pollution, the light pollution, and just the sight of these three story boxes six feet apart on lots as small as 2300 square feet in place of our beautiful country view. If this development is allowed to go forward in any configuration, the developer should be required to, at his expense, mitigate the impact on surrounding lots to the satisfaction of the adjoining property owner.

That being said, as a property owner bordering this development (our property adjoins the Torkelson Development to the north) we would like to urge you in the strongest of terms to

deny this rezone application. In fact, we ask that you revisit the variances that were granted, now that the true intentions of the developer have been clearly revealed.

In addition to denying the rezone application and revisiting the variances that were granted, we urge you to consider voiding altogether the original development application because in January, 2014, when this development was originally applied for, the application was improperly represented. Carl Torkelsen, a city official who as such should be held to a higher standard of responsibility and understanding of how to do these things, claimed to be the owner of the property when he did not, in fact, own it until December 23. 2014. Therefore, we believe this to be an illegal development. The original development application should be voided and the process started over again from the beginning.

A development of 48, three story units towering over our yard, looking in our kitchen window, blocking the passive solar heat we intentionally turned our home on its lot to access in the winter months, and blocking our lovely view of the hills and the Selah Gap is not what we want our home and our community to look like. Incompatible development in Selah must be stopped!We are urging our voting friends and family within the City limits to consider this an important issue, as we are coming up to mayoral and city council elections in the next year.

We invite you to come up our driveway at a time of your choosing to see what's already under construction, and to try to imagine what it would look like with 48 units. If you could see it, we are confident that you will know that denying this rezone application is the right thing to do. The right thing to do for the neighbors surrounding the Torkelson property, the right thing to do for the high school adjacent, the right thing to do for the entire urban growth area between Goodlander Road and McGonagle Road, and the right thing to do for the entire City and community of Selah.

Sincerely,

John H. Teske Jr
Helen G. Teske
182 Lancaster Road
Selah, WA 98942

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March 30, 2015

VIA EMAIL: tdurant@ci.selah.wa.us
and FAX: 698-7372

City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
222 Rushmore Road
Selah WA 98942

Re: Our Client: Helen and John Teske
Matter: Comments on Whispering View Estates Planned Development, Rezone and Environmental Review (File Nos. 914.45.14-01, 912.45.14-01, 971.45.14-01)

Dear Mr. Durant:

Our office represents one of the landowners most affected by the above-referenced development, John and Helen Teske, 182 Lancaster Road, Selah, whose single-family residential home immediately abuts this development on the north. Please consider this letter their initial comments opposed to the proposal, and an initial outline of their environmental concerns. These comments are being provided in response to the Amended Notice of Development Application & Environmental Review dated March 14, 2015. The Amended Notice was issued to our client in response to another failure of the City to provide adequate notice to some adjoining landowners of this pending application that has the potential to completely change the character of the neighborhood.

Because of the direct and adverse impacts of this project development on their home, our client (and the entire surrounding neighborhood) is vehemently opposed to what it believes is an illegal, overly dense and incompatible development, sandwiched between a high-quality residential neighborhood on three-quarter to one-acre lots and the City's high school. This developer is inappropriately attempting to use Selah's Planned Development zone to propose a dense, townhouse-type development at more than four times what would normally be an allowed density in an R-2 zone on some of the smallest lots ever proposed for residential development. Objectively reviewed, the project has no hope of meeting the eight or more rezone criteria in Selah's zoning ordinance, as we will be pointing out to the Planning Department and the Examiner.

From a legal standpoint, the present owner and developer, Carl Torkelson and Torkelson Construction, Inc., is simply trying to use the planned development zone to eliminate or take shortcuts on almost every reasonable development standard in the City of Selah's subdivision and zoning ordinance for the sole purpose to monetize his property and maximize the number of townhouse units that can physically be placed on the property. He is proposing to serve 48 separate units, generating 480 vehicle trips per day on substandard easements and roads, and not City streets. The development does not meet any of the residential setbacks required in R-1 or R-2 zone, and he is proposing to chop up his property into some of the smallest lots ever proposed for residential development. As we hope the Planning Department and City can appreciate, this is why our client and the adjoining residents are opposed to this development, which should simply be denied.

Background Facts. As the City's Notice indicates, a similar (but not identical) application was filed by the applicant on January 10, 2014, under the same file numbers. The application and SEPA checklist was signed by Carl and Candy Torkelson as both the applicant and legal property owner, even though they did not own the property at the time. The application was never processed because of failure to conduct an environmental review and failed notice to the neighbors; and, ultimately, was put on hold by the applicant.

Instead of processing the dense rezone and plat (which is now clear was always the applicant's intention), he tried to start the development and construction process through what he thought was a more simple process, applying for a short plats to divide the property into eight lots served by a small private road, instead of a city street as required by Selah City subdivision ordinance. These applications were processed by the City and opposed by our clients and the entire neighborhood under City of Selah File Nos. 915.45.14-02, 915.45.14-03, 913.45.14-02 and 913.45.14-04. At the time, our client's and the neighborhood's opposition to the applications was based on the then-applicant's (not owner's) development intentions disclosed in his prior planned development rezone application for Whispering View Estates (an intention the applicant denied or downplayed at the public hearing before the Planning Commission and Council). The City, following a July 22, 2014, Council meeting narrowly approved the short plat and variance with conditions. However, it should be made clear that the variance was not approved to serve a 48-unit townhouse development, which is now being re-proposed, but was only approved to serve an 8-lot short plat on which could be located a maximum of 15 units (1 duplex on each lot plus the existing single-family residence).

After receiving his approvals and buying the property, the owner/developer quickly constructed the private road and has built or is in the process of building six or more units with the obvious intention and assumption that his 48-unit substandard plat would be approved. However, it is extremely clear that his variance to serve the lots by a private road was only for an 8-lot short plat, not for a 48-unit planned development and subdivision. The owner and applicant has absolutely no vested rights to have a 48-unit plat served by a small private easement.

From an environmental and substantive standpoint, it will be the position of our client and neighborhood – and hopefully the City Planning Department – that his plat can only be served by full-built, city streets meeting Selah's current development standards. Assuming Selah properly applies its own development standards and requires city streets, the density requested by the applicant will not be possible, and existing built units will need to be moved or razed – a consequence the owner/developer created himself.

On behalf of the Teskes, our office will be requesting that the entire administrative record of the short plats and variances be made part of the current record and applications being processed because they obviously are inter-related.

Procedural Defects. Because of procedural defects in the application, the Teskes' position is pending applications are illegal and cannot be processed under the Selah zoning ordinance. Applications for rezones must be signed by the "property owner." The application currently being processed was not signed by the property owner at the time. The property was owned by the Bowers family until December 2014. The original application also has been materially changed between its original filing on January 10, 2014, based on the current Notices and maps in the file. The map for the preliminary planned development of Whispering View Estates now

has material modifications to the private easement and Tract A, at a minimum. These material changes to the application required that it be resubmitted and new notices sent out. In this case, the applicant and owner should have re-filed the application after he bought the property, signing as both the owner and applicant, providing updated maps at the time. **He is not entitled to have an old, procedurally defective application reviewed.** The application clearly has no vested rights associated with it, and a new application should have been filed when he apparently submitted "additional information" on February 10 and February 24, 2015.

Failure to Meet Legal Standards for Rezones and Plat. Additional information will be provided to the Examiner prior to the public hearing. However, the Teskes' clear position will be that both the plat and rezone should be denied based on a complete failure to meet the applicable legal standards in the Selah zoning ordinance, including without limitation those regarding minimum lot size requirements for residential zones, Chapter 10.08, the general zoning district regulations and development standards for residentially zoned property, including lot coverage, setbacks and others; the provisions and requirements of Chapter 10.24, relating to the planned development zoning district, and the rezone requirements in Selah's rezone ordinance (SMC Chapter 10.40 et seq., which among other things requires compliance with eight specific decision-making criteria, none of which the applicant can demonstrate in this case). Without in any way limiting our client's opposition to the project, special attention of City staff should be directed to the rezone criteria listed as items 10.40.050(c)4-7.

There are no substantial changes in circumstances to warrant what would be the densest single-family development in Selah (other than changes the applicant made to the property itself, which do not count). The testimony at the public hearing will be overwhelmingly against this proposal. The main reason for opposing the proposal will be that the neighbors believe this development is incompatible with neighboring land uses. One simply needs to look at the subdivision map or visit the property to confirm the incompatibility of the proposal. Clustering 48 units on 2,000- to 4,000-square-foot lots with 35-foot high, view obscuring townhouses to be used as rental housing simply is not compatible either with the R-1 or R-2 zoning districts.

Finally, there actually is no public need for the proposed change, and the property is suitable for uses permitted under the R-2 zoning district. The applicant could easily build a duplex on each of his eight lots consistent with the current approvals. He is not entitled to monetize his property by trying to squish as many high-rise townhouses as he can on one piece of property to the detriment of the neighbors. This would be an illegal spot zone under current case law. The planned development zone was not intended to allow property owners and developers to simply violate residential development standards and create incompatible development. It was designed for mixed-use-type developments that encourage a creative approach in the development of land, resulting in more efficient, aesthetic and desirable utilization of property (see SMC 10.04.010(1)). This project appears to be a completely inconsistent spot zone involving a substandard, single-family plat on R-2 zoned property.

Environmental Comments. The Teskes' position is this application should be denied both on environmental and compatibility concerns. Based on the impacts of the project of the neighborhood and infrastructure, the Teskes believe there is no possible way to mitigate the impacts of the proposed development on the surrounding neighborhood, and the SEPA responsible official should issue a positive threshold decision requiring an environmental impact statement, especially on traffic and the adequacy of city streets and infrastructure. The SEPA

checklist submitted on the old application should have been updated for a new application after the applicant bought the property. The existing SEPA checklist contains significant inaccurate and incomplete information which would not allow the SEPA responsible official to make an adequate threshold determination. By way of example, the SEPA checklist submitted with the original application fails to adequately describe and mitigate the effects of grading and filling for the roads and infrastructure in Item 1b, fails to describe and mitigate the impacts of stormwater runoff, fails to describe or propose any mitigation measures to ensure the proposal is compatible with existing land uses under Section 8l, claims that no views will be blocked in Section 10b, which is not true ... the Teskes' view already has been obstructed by the units built. The transportation impacts in Section 14 are grossly understated. At a minimum under ITE trip generation figures, the as-built development would be expected to generate 480 peak hour trips per day on a 20-foot paved road located on a 24-foot easement that is inadequate to handle the traffic. The proposed private roadways come in with site distance issues on Goodlander Road, and frontage improvements are inadequate to handle pedestrian traffic, bus stops, children walking to school, et cetera. Full-built city streets should be required to serve a development this dense, assuming one would even be allowed, which it should not. Again, the applicant has no vested right to serve this new plat with the private road, which was narrowly approved by a city variance only to serve eight R-2 zoned lots (not 48 mini lots).

The Teskes' and the other neighbor's environmental concerns, some of which were outlined in the short plat and variance application, which they reassert in no particular order are as follows.

(1) Traffic. City streets should be required to serve the development and impacts on Goodlander and nearby intersections should be done through a professional traffic impact analysis or EIS paid for by the applicant. Frontage improvements on the north side of Goodlander are completely inadequate to handle this size of development, and the proposed density has no room for the safe operation and flow of vehicle traffic and parking.

(2) Noise and Lighting. Noise and lights in this dense development at such close proximity to each other and adjoining homes will have a substantial adverse environmental effect on the surrounding homes. There is no way to mitigate impacts other than to reduce density, increase setbacks, or limit building height. The developer was completely unwilling to consider these types of mitigation measures in earlier hearings, and we anticipate his position will be the same during the processing of this new application. In such event, this proposed plat and rezone should simply be denied.

(3) Construction Impacts. The adjoining neighbors already have been adversely impacted by the environmental impacts of the applicant's construction. Significant cuts and fills of soil without compaction have occurred. Adjoining landowners are concerned about lateral support and slopes, especially along the private interior road. Slopes in excess of 2 to 1 ratios should require engineered retaining walls in accordance with development standards, and soil should be properly compacted along boundary lines to provide proper lateral support to the neighbors. The same construction impacts will be worse if this owner/developer were allowed to build the number of units he seeks.

(4) Aesthetic Impacts. The aesthetic impacts on the neighborhood are striking. There are no site screening or safety fences proposed or being built. In stark contrast to the high-quality residential area, this owner/applicant has started building tall, narrow townhouse buildings

designed for rental, instead of owner occupied use, which looks like a development more appropriate for Seattle's east side.

Please consider this letter the initial comments on the proposal from the adjoining landowners John and Helen Teske. We ask that this letter be made part of the official record of this application. In addition, on behalf of the Teskes, we specifically request copies of all notices and additional information relating to the pending application received by the City in a timely matter so we can respond.

In summary, we are asking that the processing of the application and building permits be stopped, that a new application be filed, that a positive threshold determination be made requesting additional environmental information on the clear significant impacts of the project and, ultimately, that a recommendation for denial be made by the Planning Staff to the Selah City Council.

Yours very truly,

HALVERSON NORTHWEST LAW GROUP P.C.

Mark E. Fickes

Mark E. Fickes

MEF:tia
CC: Helen and John Teske

EXHIBIT B

City of Selah, Washington
Office of the Hearing Examiner

Application for a Rezone and Preliminary Plat	**Selah File Nos. 912.42.14-05; 914.42.14-04**
By Zuker-Sample Development, LLC.	**HEARING EXAMINER RECOMMENDATION**
To Rezone Property near the intersection of Herlou Drive and Lyle Loop from One-Family Residential to Planned Development and Approve the 24-Lot Preliminary Plat of Somerset II.	

I. INTRODUCTION.

Zuker-Sample Development, LLC (hereafter "Applicant") has applied to rezone and subdivide 2 parcels of property in accordance with Planned Development provisions of the Selah zoning ordinance. The name of the project proposal and subdivision is "Somerset II." The proposal would result in the subdivision of each the existing 2 lots into 24 new single family lots and a common open space parcel. The Applicant initially sought a *Comprehensive Plan* amendment in order to allow moderate density residential development of the property. Associated with the plan amendment, the Applicant applied for a 33-lot residential subdivision and a Planned Development to allow smaller lot sizes and different infrastructure development than would otherwise be allowed under the zoning ordinance. Following Selah Planning Commission review of the proposal, including environmental review under the State Environmental Policy Act, the Applicant modified the proposal so as to allow consideration under the Planned Development ordinance without a comprehensive plan amendment. No additional SEPA review has been conducted on the amended application. The application process was somewhat complicated by the fact that the application was submitted after the effective date of the annexation of the property into city but prior to the recording of the annexation ordinance. The ordinance annexing the property was recorded on December 1, 2014. An open record hearing on the planned development and subdivision proposal was conducted December 4, 2014. The Hearing Examiner viewed the site on the same date. Community Planner Dennis Davison and city consultant Tom Durant provided a staff report prior to the hearing, which is included in the hearing record. Roy Sample appeared on behalf of the Applicant and presented information concerning the Applicant's objectives for the development proposal and the general correlation of subdivision improvements and lot size to property values in the general vicinity. Several members of the public commented on the application at the hearing. The comments concerned

- whether any effective application for the subject project has been made, based on the status of annexation prior to recording the annexation ordinance applicable to the project;
- whether the modification of lot size through the Planned Development process based on the property attributes, including interpretation of ordinance provisions regarding

efficiency of land use;

- the role of the economic advantage of the developer in Planned Development rezone approval,
- comprehensive plan requirements pertaining to lot size in low density residential areas,
- potential revision of the proposed detached single family residential use to other uses,
- use of a private road rather than a conforming public street to serve the northern-most tier of proposed lots,
- compliance of public street design with subdivision design standards (reverse curves),
- community impacts from on-street parking,
- impacts to neighborhood character from the subdivision design,
- the role of "changes of circumstances" in rezoning property,
- the adequacy of the application materials under the Planned Development ordinance, including topographical mapping,
- the effects of dual or multiple frontage lots as proposed in the application,
- feasibility access to Lot 1 off of Herlou Drive, based on steep slope considerations,
- adequacy of open space,
- procedural limitations on city actions pending completion of annexation under state law, and
- procedural limitations on subdivision applications where a prior preliminary plat approval was in place.

Because the application was cast as an amended application, the Hearing Examiner requested that records developed during review of the original application be made part of the record. The Examiner received such materials on December 17, 2014.

II. SUMMARY OF RECOMMENDATION.

Based on application materials, substantial public comment and information contained in public records and documents, the Hearing Examiner's findings indicate that insufficient demonstration has been made that the proposed Planned Development rezone application by Zuker-Sample Development LLC to rezone property described in the Preliminary Planned Development of Somerset II complies with the 2005 Selah Comprehensive Plan and Chapter 10.24 of the Selah Municipal Code. In particular, the findings indicate that compliance has not been shown with respect to Objectives HSG 1, HSG 2 and HSG 4, and related provisions SMC 10.24.060. Therefore, the recommendation is that the rezone should be denied, but without prejudice and with allowance for reopening the open record proceeding commenced in accordance SMC 10.24.060 to allow consideration of and public comment on additional information and amended development plan or program material submitted by the Applicant in its discretion.

~~Based on~~ the staff report and exhibits, the viewing of the site, statements and comments received at the open record hearing and in writing, public records of City Council and Planning Commission actions related to the subject property, and a review of pertinent development regulations and *2005 Selah Urban Growth Area Comprehensive Plan* (hereafter referred to as the "*Comprehensive Plan*"), the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

The applications for rezone and subdivision were filed by Zuker-Sample Development LLC, which is the property owner of record.

2. LOCATION.

The properties front on Herlou Drive to the west and Lyle Loop Road to the east. The Yakima County Assessor's tax parcel numbers for the properties are 181426-44005 and 181426-44021.

3. APPLICATIONS.

The applications propose to rezone approximately 4.7 acres from One-Family Residential (R-1) to Planned Development (PD) and concurrently subdivide the site into 24 single family residential lots consistent with documents submitted by the Applicant to meet the requirements of SMC 10.24.030 and SMC 10.24.050.

The average lot size is 7,041 square feet (0.16 acre). This results in a gross density of 5.1 per acre. The Applicant proposes development in three phases. The dwelling units in Phases 1 and 2 are proposed to be served by City maintained Lyle Loop Road, while Phase 3 would be served by a private interior street in 20 to 26 foot wide access easements. Phase 1 consists of 8 lots, Phase 2 has 10 lots and Phase 3 has 6 lots. Proposed Lot 1 in Phase 3 abuts Herlou Drive, and might be accessed from Herlou Drive, although the current topography makes such access problematic (25% slope).

Public sewer lines, water lines and drainage improvements have been installed in Phase 1 in accordance with the earlier County decision approving the previous preliminary plat; engineering plans for these improvements have been approved by the Selah Public Works Department. These utilities would be extended into Phases 2 and 3.

- A new 8-inch domestic water line will be extended from where Lyle Loop Road currently ends on the east side of the site to Herlou Drive within the proposed alignment of Lyle Loop Road through proposed Phases 1 and 2. A water line would be extended into Phase 3, using the access/utility easement that is proposed to provide access to the lots in that phase.
- An 8 inch sanitary sewer line will extend west through Phases 1 and 2 in the proposed alignment of Lyle Loop Road beginning where the street ends currently, and terminating just before reaching Herlou Drive on the west. The preliminary plat shows a 16 foot wide sewer easement through Lots 8 and 9 that would connect Phase 3 with the line on Lyle Loop Road. The combined access/utility easement through Phase 3 would allow sewer extension to all of the lots in the phase.

- Although hydrant locations for the proposal are not indicated on the preliminary plat, a hydrant has been installed on the site in the alignment of Lyle Loop Road where it would abut proposed Lots 7 and 22 about 450 feet (travel distance on the street) from an interior hydrant on the existing segment of Lyle Loop Road and about 460 feet from Herlou Drive.

4. CURRENT SITE CONDITION AND ZONING

The subject property is zoned One-Family Residential (R-1). It is vacant, but some utilities have been extended into the property in association with the 1997 preliminary plat approval by Yakima County. The Applicant represents in its application materials that the earlier plat is "null and void." This is consistent with legal requirements for the completion of final plat development within five years as shown on Hearing Exhibit 10 (Yakima County resolution approving preliminary plat of Somerset II). The property at its northwest corner immediately adjacent to Herlou Drive has a roughly 25% slope. The balance of the property has a slope of 5% to 8%, more or less, based on the topography map in the application materials. Existing fire hydrants are located at the intersection of Lyle Loop Road and Herlou Drive in the existing Somerset I subdivision and about 520 feet to the east on the north side of Lyle Loop Road.

5. NEIGHBORING ZONING AND LAND USE.

Adjacent lands to the east and south are within the city limits and are zoned One-Family Residential. Abutting lands to the north and across Herlou Drive to the west are within Yakima County jurisdiction. Those lands are zoned One-Family Residential under Title 15 of the Yakima County Code. All neighboring properties have been developed into detached single family residences. Lot sizes in the immediate vicinity ranges from 0.2 to 0.66 acres, with one large lot (2.81 acres) to the immediate northeast of the subject property.

6. ENVIRONMENTAL REVIEW.

A Determination of Nonsignificance (DNS) was issued October 3, 2014 for the Applicant's original proposal for a *Comprehensive Plan* modification, rezone to Planned Development, and 33-lot preliminary plat for the subject property. There has been no appeal of the DNS. City staff does not believe the amendment requires any environmental review beyond the original DNS. No public or agency comment of record indicates any dispute on adequacy of the DNS to address the amended application.

7. 2005 SELAH URBAN AREA COMPREHENSIVE PLAN DESIGNATION.

The subject property and surrounding areas are designated as Low Density Residential on the Future Land Use Map adopted with the *Comprehensive Plan* in 2005. The designation includes adjacent County land within Selah's Urban Growth Area.

8. HEARING EXAMINER JURISDICTION

The Hearing Examiner has jurisdiction to conduct open record hearings on Planned Development applications based on SMC 10.24.060. Hearing Examiner minor rezone review authority is included in SMC 10.40.070, and preliminary plat review authority is included in SMC 10.50.025. Some public comment regarded whether the review process could proceed in absence of the recordation of the ordinance by which the subject property was annexed. The comment was based on a brief [Hearing Exhibit 5] apparently submitted during the course of the city council's review of the Planning Commission recommendation on the original application for the *Comprehensive Plan* amendment and major rezone. However, the brief does not address the fact that an annexation ordinance sets forth the effective date of the annexation. RCW 35A.14.100, RCW 35A.14.150. Annexed property becomes part of the city upon the effective date. Id. The effective date of the West Goodlander annexation was February 1, 2014 (See Selah City Council Ordinance No. 1935). The Hearing Examiner is charged with recommending approval or denial of the Planned Development rezone.

9. PROJECT ANALYSIS

a. Review Criteria.

The review criteria specifically applicable to a Planned Development zone application are set out in SMC 10.24.060. Public comments raised concerns regarding the compliance of the amended application with the provisions of SMC 10.40.070, which concerns review criteria applied in hearing examiner review of "minor rezones." In particular, public comment concerned whether there is any public purpose to be served by the zoning change as required in SMC 10.40.050(c)(3) or any change in circumstance to substantiate a rezone based on SMC 10.40.050(c)(4). These provisions are made applicable to a minor rezone based on SMC 10.40.070(a). The original application for the Somerset II development included a major rezone request. The City Council remanded the original Planning Commission recommendation on the major rezone back to the Planning Commission based on its determination that application materials were incomplete on October 14, 2014. As noted earlier, the original application was amended to avoid the necessity for a *Comprehensive Plan* amendment, and thus allow review by the Hearing Examiner as a minor rezone.

The staff report analyzes the amended application based on the implicit assumption that minor rezone review criteria are applicable to the Planned Development rezone. On this basis, the application would be reviewed based on both the standard rezone criteria and the criteria in SMC 10.24.060. In applying the ordinances, they must be given the effect of their plain meaning. *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (Wash. 2002).

However, it is not clear that a "verified rezone application" for a Planned Development based on provisions of SMC 10.24.050 is subject to the provisions of SMC 10.40.070, given the specificity of the review criteria in SMC 10.24.060. The Planned Development ordinance makes no mention of either major or minor rezone review requirements, and some of the Planned Development review requirements overlap the SMC 10.40.050(c) review requirements,

particularly with regard to consistency with the *Comprehensive Plan* and harmony or compatibility of the proposed action with neighboring uses.

In addition, the purpose of the Planned Development zoning provision as expressed in SMC 10.24.010 is to provide project-specific relief from otherwise applicable zoning standards in order to allow creative use of property consistent with the *Comprehensive Plan*, in contrast to SMC 10.40.050(c), which concerns adjustments to zoning to allow a different array uses than would be allowable under existing zoning. The broader rezoning ordinance is reviewed based on the relationship of the changed zoning designations (and permissible uses in the zone) with changes in circumstances, suitability of property for uses allowed in a proposed zone, and public purposes to be served by change of designation.

The application of the different review criteria to the same proposal presents the awkward possibility of the proposal being appropriate under one set of criteria, and inappropriate under the other. In the interest of providing a complete record, the application materials are reviewed below under the criteria of both the general rezone criteria in SMC 10.40.050(c) and the specific Planned Development review criteria in SMC 10.24.060.

b. Application of the Planned Development Review Criteria

(1) Substantial conformance to the city of Selah Urban Growth Area Comprehensive Plan:

The *City of Selah Urban Growth Area Comprehensive Plan* designates the property as Low Density Residential on the adopted 2005 Future Land Use Map. This designation provides for a maximum density of 5 dwelling units per acre. The intended future use of Low Density Residential lands is a mix of single family, two-family, townhouse and multifamily residences. The mix of residential uses is controlled by the maximum density limitation on future (new) development. The density of development under the proposed project is 5.1 dwellings per acre, which is 2% greater than the *Comprehensive Plan* density limitation. Based on the development plan, the housing units in the project would be detached single family dwellings. Consequently, the proposed density does not appear to bear on the mix of uses in this case. Other potentially relevant *Comprehensive Plan* objectives and policies suggested by the staff report are discussed as follows:

> *(i) Objective LUGM 3: Encourage economic growth while maintaining quality development and controlling the cost of public improvements in Selah's UGA. Related policies include Policy LUGM 3.2 ("Direct development to areas where infrastructure (water, sewer and streets) is either present, can be easily extended, or is planned to be extended") and Policy LUGM 3.3 ("Conserve land, energy and financial resources by minimizing urban sprawl").*

The proposed project does not conflict with these considerations, but neither does it help realize them, since rezoning in this case does not direct development nor reduce sprawl in any obvious way. The property was previously subject to a preliminary plat approval by the County, although at a lower density of development. Nothing in the policies correlates economic growth with maximizing residential density. None of the immediately surrounding neighborhood

appears to have been developed up to maximum density of 5 dwelling units per acre. As the Community Planner Dennis Davison noted at the hearing, the only place where densities comparable to the proposed project have been developed is at "The Crest" subdivision, which is separated from the subject property by at least one tier of lots that are 0.3 acres and up. "The Crest" was subdivided prior to the establishment of current R-1 minimum lot size requirement according to Mr. Davison.

> *(ii) Objective HSG 1: Maintain and upgrade the character of existing residential neighborhoods. Related Policy HSG 1.2 encourages "new single-family development throughout existing single-family neighborhoods as redevelopment and infill construction at appropriate densities.*

The project would develop vacant property in the midst of a single family neighborhood, some of which is within city limits, and some outside city limits. Public comments raised concerns about the effect on neighborhood character from the proposed small lot sizes, the use of a private road easement to serve the Phase 3 lots, and the potential creation of what would effectively be double and triple frontage lots as a result of the private road development. In light of the general disfavor for double frontage lots in SMC 10.50.041(e), and disparity in lot sizes between those proposed and those in the immediate neighborhood, it is not clear that the proposed alignment "maintains and upgrades the character of existing residential neighborhoods." Neighboring properties on Lyle Loop Road have been developed in compliance with R-1 standards. The concept of "appropriate densities" is discussed further in the analysis of Policy HSG 2.1, below.

> *(iii) Objective HSG 2: Encourage new residential development to approximate existing residential densities and housing mix levels. Policy HSG 2.1 encourages that the combined net density of all residential development remain at present levels. Exceptions to this policy should be permitted where the developer can demonstrate that the quality of the project design, construction and amenities warrants a different housing density.*

The *Comprehensive Plan* maximum density provides for an average lot size of 8,712 square feet or 0.2 acre. This is roughly the density of current development on Lyle Loop Road. Nearby development on Herlou Drive and Weems Way translates into a density of roughly 2.5 dwelling units per acre (roughly 0.4 acre lots based on-line information available from the County Assessor's web site.[1] See Figure 1).

The average proposed lot size for the proposed development is 7,041 square feet. This amounts to a 19% reduction below the "average" R-1 lot size and a 60% reduction below the Herlou Drive/Weems Way lot sizes. It is not clear that the proposal "approximates" the surrounding density. The key question thus becomes whether "the developer can demonstrate that the quality of the project design, construction and amenities warrants a different housing density." In this regard, nothing in the application materials purports to show that a higher housing density is

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1 http://yakimap.com/servlet/com.esri.esrimap.Esrimap?name=YakGISH&Left=1630284&Bottom=485709&Right=1632627&Top=487633&TAB=TabAssessor&DropDownOrtho=None&Contour=&Utilities=&FEMA=&CAO=&DropDownPlanning=Zoning&DropDownMapSize=Small&click.x=265&click.y=161&Cmd=ZI&ORTHO_LIST=None&MAP_SIZE=Small

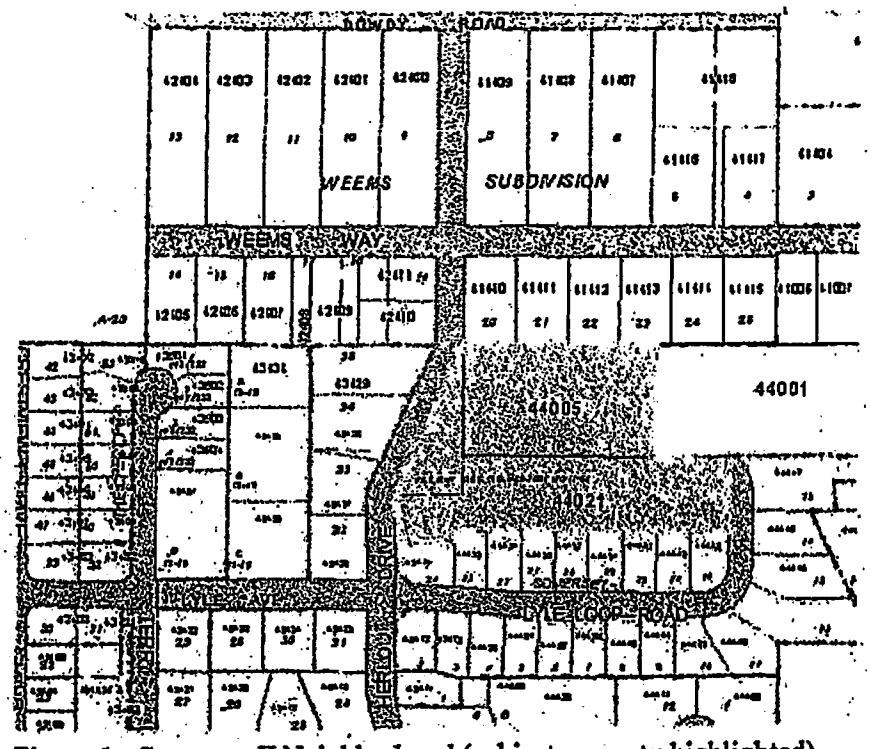

Figure 1. Somerset II Neighborhood (subject property highlighted)

warranted based on quality of project design, construction or amenities. Rather, the stated goal of the Applicant is to achieve the highest density allowable under the *Comprehensive Plan* density limitations.

> *(iv) Objective HSG 4: Encourage new residential construction to be compatible with existing residential development. Policy HSG 4.1calls for encouraging developers to use private covenants and deed restrictions which specify architectural, maintenance and landscaping standards within their development.*

The thrust of much of the public comment received on the project was that the lot sizes and subdivision design are not compatible with neighboring residential development, and that neighboring property values would be impaired. The Applicant included with the development plan an analysis that provides evidence that the lot sizes proposed do not necessarily adversely affect property values. The analysis relies on tax valuations by the County Assessor, and principally refers to properties within The Crest subdivision to show that lot size is not controlling with respect to value.

Property value is not the sole basis for evaluating compatibility based on the pertinent objective and policy. Architectural, maintenance and landscaping standards are implicitly associated with the compatibility analysis, and the application materials include no evidence of consideration of such standards, other than photographs of existing homes in The Crest subdivision, reliance on future lot developers to provide landscaping, and the designation of a 1233 square foot open space parcel without clear indication of its objectives or potential use. It is noteworthy in this

regard that provisions of SMC 10.24.030 call for the preliminary development plans to contain such information as "horizontal and vertical dimensions of all buildings and structures proposed to be located on the site which shall include drawings, architectural renderings or photographs of proposed buildings" and proposed landscaping. These provisions and similar provisions in SMC 10.24.050 appear to track the compatibility objective and policy in the *Comprehensive Plan*.

The Applicant has also indicated that the smaller lots will support lower cost housing development, consistent with the *Comprehensive Plan*'s affordable housing goals. However, the housing strategies adopted in the *Comprehensive Plan* at p. 41 only address parcel size in the context of cluster development. Cluster development could be achieved through a planned development process, but is not part of the current proposal. In any case, this market-based concept does not override other housing objectives and policies in the *Comprehensive Plan* in any clear way.

(2) The proposal's harmony with the surrounding area, or its potential future use.

This criterion appears to track closely with the previously discussed *Comprehensive Plan* provisions related to compatibility with neighboring residential uses and approximation of neighboring densities. The same analysis applied to *Comprehensive Plan* compliance also applies here.

(3) The system of ownership and means of development, preserving and maintaining open space.

The preliminary plat shows an open space parcel of 1,233 square feet, to be located on the boundary of Lots 1 and 13 and adjacent to Herlou Drive. No information has been provided in the application materials regarding its development, preservation and maintenance, except to note that open space can be used to preserve natural features. In addition, no information has been provided to show the suitability of the open space for the proposed development as provided in SMC 10.24.080.

(4) The adequacy of the size of the proposed district to accommodate the contemplated development.

The Planned Development ordinance does not provide specific guidance as to what would constitute the "adequate" size of property to support a PD approval. The property is not large enough to allow conforming public streets to serve the proposed Phase 3 lots without further reducing lot size. Private streets are allowable under the subdivision standards when there is no impairment to traffic circulation on public streets. SMC 10.50.041(d)(4). There is no record of any fire safety or similar concerns held by city fire or public works officials regarding the configuration of the development or means of access. If it assumed that the basic objective of the proposal is to reduce lot size, the evidence in the record does not provide a basis for saying that the space is not adequate for the proposed project.

(5) Compliance with Chapter 10.24 SMC.

Certain procedural requirements are called out in the Planned Development ordinance. These include:

- Filing of a notice of intent, along with a preliminary development plan and program containing certain specified information per SMC 10.24.020 and SMC 10.24.030;
- Filing a final development plan and program containing certain specified information along with and "verified rezone application" per SMC 10.24.050;

Specified information requirements to be included in the final development plan and program include

a) Existing maps drawn to scale of not less than one inch to one hundred feet and proposed final contour map;
b) Location, with the names of all existing and proposed streets, public ways, railroad and utility rights-of-way, parks or other open spaces and all land uses within two hundred feet of the boundary of the development;
c) Existing sewers, water mains and other underground facilities within and adjacent to the development and their certified capacities;
d) Proposed sewer or other waste disposal facilities, water mains and other underground utilities;
e) Subdivision map, in the event a proposed planned development application is combined with a proposal to divide land into lots, identifying proposed lot configuration and size in square feet);
f) Proposed land use map identifying the location and purpose of each structure;
g) Location and size in square feet of community facilities;
h) Location and size in square feet of open space;
i) Traffic flow plan;
j) Location and dimension of walks, trails or easements;
k) Location of off-street parking areas, arrangement, number and dimensions of auto garages and parking spaces, width of aisles, bays and angles of parking;
l) Location, arrangement, number and dimensions of truck loading and unloading spaces and docks;
m) Preliminary plans, elevations of typical buildings and structures, including general height, bulk, number of dwelling units and the exterior appearance of the buildings or structures;
n) Approximate location, height and materials of all walls, fences and screens;
o) Indication of stages of development.
p) Statement of goals and objectives, i.e., why it would be in the public interest and be consistent with the *Comprehensive Plan*;
q) Tables showing total number of acres, distribution of area by use, percent designated for dwellings, commercial or industrial uses and open space, number of off-street parking spaces, streets, parks, playgrounds, schools and open spaces;
r) Tables indicating overall densities and density by dwelling types and any proposal for the limitation of density;
s) Restrictive covenants, other than those relating to retention and maintenance of common open space;
t) Development timetable.

While all these elements are indicated as required in the final development plan and program, the ordinance does not specify that every Planned Development project must have all of the elements. The ordinance is not clear as to which of the listed elements might be necessary and which are not. For example, open space is not prescribed as a requirement. In the earlier version of the ordinance, required open space was contemplated as a means of realizing the "full potential" of a property. See Selah City Council Ordinance 1779, §78 (2004). As amended in 2009, the ordinance retains provisions for open space evaluation and protection evaluation but no longer references the use of required open space to realize full property potential. City planning officials have viewed this change as having the effect of not requiring open space, but if open space is provided in a proposal, then the adequacy review and protection provisions still apply. However, it seems that, if open space was not important to the scheme of the ordinance, the very specific requirements for open space evaluation and protection could have been removed at the time it was amended.

Interpretation of local ordinances is governed by the same rules of construction as state statutes. Ordinances must be reasonably construed with reference to their purpose. *HJS Development, Inc. v. Pierce County* 148 Wn.2d 451, 471-472, 61 P.3d 1141 (Wash. 2003). The purpose of the Planned Development ordinance is to allow new development that is consistent with the *Comprehensive Plan* but that would not be readily permitted in other zoning districts due to limitations in dimensional standards, permitted uses, or accessory uses. Ordinances must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (Wash. 1996). The specified elements of the required development plan and program cannot be read to be superfluous. At the least, the requirements must be read as considerations in whether the proposed Planned Development is consistent with the *Comprehensive Plan*. Planned Development review is not merely a matter of assuring the proposal meets the limitation on maximum density. Other elements of the ordinance also would seem at least to illustrate the City Council's purpose.

Given the scope of the project (detached single family residential) and the information provided in the staff report, the purpose of the ordinance has generally been served by the submitted materials with regard to plan and programs elements a) through g), i) through l), o) q) and t), set out above. However, the submitted materials are lacking information regarding

- open space adequacy and protection,
- preliminary plans, elevations of typical buildings and structures, including general height, bulk, number of dwelling units and the exterior appearance of the buildings or structures,
- approximate location, height and materials of all walls, fences and screens,
- a statement of goals and objectives, i.e., why it would be in the public interest and be consistent with the *Comprehensive Plan*,
- restrictive covenants, other than those relating to retention and maintenance of common open space.

These elements are all related to issues of substantial conformance with the *Comprehensive Plan* discussed above at pp. 6-9, above.

In addition, relief from subdivision standards provided in SMC 10.50.041(d) and (e) for planned developments depend on a showing of good cause. In this instance, good cause is directly dependent upon the proposed Planned Development being consistent with the *Comprehensive Plan*. The Applicant and the staff report equate "efficiency" and "desirability" as the terms are used in SMC 10.24 010(a) with the development of the property to maximum density. Such efficiency or desirability could be the basis for a showing of good cause for relief from subdivision design standards. However, since the terms are not specifically defined in the ordinance, they must be construed in the larger context of the ordinance and the *Comprehensive Plan* it implements. The 5 dwelling unit per acre reference in the *Comprehensive Plan* is a density limitation, rather than a desired density target, and as discussed earlier, other provisions of the *Comprehensive Plan* are relevant to the proposal.

Based on the lack of information related to compliance with the *Comprehensive Plan*, it is difficult to justify any recommendation for approval. It is no less difficult to justify a recommendation for approval that is conditional on the submission of the additional information. Such additional information would not be subject to public review and comment for the record, so the purpose of the open record hearing on the application would be undercut.

c. Application of the Minor Rezone Review Criteria

(1) The extent to which the proposed rezone is consistent with and/or deviates from the goals, objectives, mapping criteria and policies adopted in the *Comprehensive Plan* and the intent of Title 10 SMC.

The conformance of the proposed project and rezone with the *Comprehensive Plan* is discussed above at pp. 5-8. The purpose of Title 10 SMC is set out in SMC 10.02.030. Of particular note, the purpose includes

- Implement the city of Selah Urban Growth Area Comprehensive Plan enacted pursuant to the Washington State Growth Management Act;
- Assure the orderly development of the city consistent with the Selah Urban Growth Area Comprehensive Plan goals and policies; [and]
- Encourage orderly growth while integrating new development and redevelopment into the fabric of the community while maintaining a high quality environment[.]

These purposes, including integration of new development in the fabric of the community, are also addressed at pp.6-9.

(2) The adequacy of public facilities, such as roads, sewer, water and other public services required to meet urban or rural needs.

There is no evidence that public facilities associated with the subject property are inadequate to meet urban needs. City public works and fire officials do not object to the proposed public facility elements of the project.

(3) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the *Comprehensive Plan* and this title have been adopted, is served by the proposed application. Findings that address public need shall, at a minimum document:

a. Whether additional land for a particular purpose is required in consideration of the amount already provided by the plan map designation or current zoning district within the area as appropriate;

b. Whether the timing is appropriate to provide additional land for a particular use.

As described in the staff report and by the Applicant, there may be demand for lower cost residential development that might be afforded by smaller lot sizes, though these representations by themselves do not constitute substantial evidence of such a demand. More importantly, it is not clear that the satisfaction of such demand is a cognizable public purpose for which the *Comprehensive Plan* has been adopted. See *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 176 Wn.App. 555, 309 P.3d 673, (Wash.App. Div. 3 2013) (County did not identify any evidence demonstrating public need, and "desires are different than needs"). This is in contrast to the matter of affordable housing, and the *Comprehensive Plan* includes specific strategies for affordable housing beginning at p.41. No provisions in the *Comprehensive Plan* or zoning ordinance have been identified as recognizing as a distinct housing type or public purpose a "small lot detached single family residence" except as may be implied from the cluster development provisions of the Affordable Housing section of the plan. Otherwise, mixes of housing types are contemplated in existing zoning districts and addressed in the permitted use table in Chapter 10.28 SMC.

(4) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone.

The property was zoned R-1 in the annexation ordinance that became effective February 1, 2014. Neither the Applicant nor the staff report address any substantial changes in circumstances that might warrant a site specific rezone. Such a rezone would not be required to implement the existing provisions of the *Comprehensive Plan.*

(5) The testimony at the public hearing.

Issues raised in public comments have been addressed above in the specific context of the pertinent review criterion.

(6) The compatibility of the proposed zone change and associated uses with neighboring land uses;

Compatibility of the proposed Planned Development zone with neighboring uses is discussed above at p.8. The uses in the zone are limited to those described in the development plan and program required by SMC 10.24.050.

(7) The suitability of the property in question for uses permitted under the proposed zoning;

The uses under the proposed Planned Development (detached single family residential) are the same as those under the existing R-1, zoning. There is no evidence that property is physically unsuitable for residential development.

(8) The recommendation from interested agencies and departments.

No agency recommendations regarding the application materials in the record have been received.

d. Subdivision review.

Subdivision design standards are set out in SMC 10.50.041. In addition, conventional conditions on preliminary plat approval will assure compliance with the standards, subject to prior or contemporaneous Planned Development approval. Based on staff review, it appears that the proposal generally complies with the standards or can made to comply with the addition of certain typical fire hydrant requirements, and the extension of typical utility services to Phases 2 and 3. Exceptions relate to block design, minimum lot size and dimensions (which is the basis for the application for Planned Development zoning) and the use of private streets for access. Certain subdivision standards that may be modified by a planned development under SMC 10.50.041(e) for good cause and where appropriate to provide for the contemplated type of development and land use. As has been noted, good cause is tied to consistency of the Planned Development with *Comprehensive Plan*. Assuming consistency for the sake analysis, the pertinent standards are assessed below:

(1) Use of Private Streets for Access .

The need for a private access street is primarily based on the topography and size of the area north of Lyle Loop Road. The application describes the private road system as providing sufficient turn-around for fire apparatus with the farthest home no farther than 150 feet from a fire hydrant as required by the Fire Code. The subdivision code states that private access streets may be authorized where there will be no adverse effect on future traffic circulation of neighboring parcels (SMC 10.50.041(d)(4)). This is the case based on topography of the site, which together with the development of surrounding areas, precludes future street extension into those areas. The same conditions limit the availability of street frontage to the relatively undeveloped area to the east. Parking within the access street will be subject to "no parking" restrictions as necessary to comply with fire apparatus access requirements and pedestrian safety. It is noteworthy that the use of paved private access easement effectively reduces the useable area of the servient lots in amounts ranging from ±650 square feet to ±1,500 square feet (for Lots 9 and 10).

(2) Double Frontage Lots

Double frontage lots (lots having frontage on two streets) "...should be avoided whenever possible" SMC 10.50.041(e)(4). Potential double frontage in the current case arises from the

necessity for private streets to utilize the site consistently with the Planned Development. The intent behind avoidance of double frontage is not expressed in so many words in the zoning or subdivision standards, and no policy perspective is included in the staff report or written materials, but the plain language calls for avoidance and is presumably considered to be appropriate to meet the purposes of the City's zoning controls in SMC 10.02.020. It appears that no other subdivisions in the area include lots with double lot frontage (other than corner lots).However, the configuration is not readily avoidable if the block design and lot size proposed in the Planned Development is to be implemented.

(3) Minimum Lot Width.

The reduced widths of Lots 7, 9 and 10 are minimal (less than one foot) and are likely a result of fitting the lots to the site and to accommodate the private street system. Lot 1 does not meet the standard, but only because it is measured at the rear of the front yard. Farther back, lot width exceeds 60 feet. There is no intent given by the zoning or subdivision codes for lot width requirements, but the staff report indicates that the widths are typically required to avoid irregularly shaped lots and ensure that setbacks can be met. Corner lots may need more width because they have larger side setback standards, and also to provide enough area to accommodate vehicles where there is direct access to a street. Due to the minor amount of reduction and the other characteristics of these lots, they would remain practicably developable.

(4) Public Comment on Street Design.

Comments raised concerns about an apparent street jog indicated on the preliminary plat in the vicinity of Lots 7, 8, 21 and 22. Public street design on the plat is appropriately to be conditional subject to City approval for consistency with subdivision design standards prior to street construction, and can be addressed by conditions on preliminary plat approval.

From the foregoing findings, the Hearing Examiner makes the following

IV. CONCLUSIONS.

1. Any of the foregoing Findings that are more suitably characterized as conclusions are deemed to be such.

2. Notwithstanding the delay in recordation of the West Goodlander Annexation ordinance, the Hearing Examiner has jurisdiction to conduct an open record hearing on the applications for a PD rezone and associated subdivision, and to make a recommendation to the Selah City Council regarding approval or denial of applications. The approval recommendation can be conditional, and nothing requires that a recommendation for denial be a denial with prejudice.

3. The application materials do not provide sufficient information to confirm compliance with Chapter 10.24 as indicated by SMC 10.24.060, and as discussed in the Findings at pp 10-12. Such information would typically be subject to review and comment in the required public

hearing, but would be insulated from such comment if a recommendation for approval was made conditional upon the future submission of such information.

4. Based on current information in the record, the Planned Development zone would not be responsive to complaints that the project is inconsistent with protection of and harmony with neighboring uses described in *Comprehensive Plan* objectives and policies as discussed at pp. 6-9 in the findings. In absence of effective responses to those matters, particularly any showing that "*quality of the project design, construction and amenities warrants a different housing density*" than a density approximating the neighboring densities, the Planned Development is not harmonized with the *Comprehensive Plan*. Because the concerns raised at the hearing are tied to considerations in the *Comprehensive Plan*, they are not mere expressions of displeasure. *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (Wash. 1995)

5. If the Planned Development rezone is subject to the Minor Rezone review criteria in Chapter 10.40 SMC, the application materials and hearing evidence fails to show that such a rezone is supported by public need or that a material change in circumstances related to the property has occurred that renders the rezone appropriate. However, if a Planned Development project otherwise meets the requirements of Chapter 10.24 SMC, that ordinance does not require by its terms that the "verified rezone application" be reviewed under Chapter 10.40 SMC.

6. Based on the incompleteness of the application materials and hearing information for purposes of showing that the proposed Planned Development complies with *Comprehensive Plan* provisions, objectives and policies, a recommendation of approval, even with conditions, is not appropriate. However, there is no basis for concluding that the information cannot be developed to show *Comprehensive Plan* compliance or that the development plan and program cannot be amended to address the issues raised at the open record hearing. Consequently, a recommendation for denial can be for denial without prejudice, so that the appropriate information or amendment might be developed.

7. If the City Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC notwithstanding a recommendation for denial, the approval should be appropriately conditioned on the following requirements as set out in the staff report:

1. All design and/or improvement notations indicated on the preliminary plat are included herein as conditions of preliminary plat approval. (Including, but not limited to, dedicated right-of-way width, easement widths and locations, lot size and configuration).

2. A preliminary engineering report and/or plan, prepared by a Licensed Professional Engineer, demonstrating the feasibility of construction of all public improvements required by Selah Municipal Code, Chapter 10.50, must be submitted to the Public Works Director for approval, including approval of compliance with public street alignment requirements.

3. All final plans and specifications for improvements must be prepared by a Licensed Professional Engineer and reviewed and approved by the Public Works Director prior to construction. Specifications for improvements shown on the preliminary plat are minimum specifications that may be superseded by conditions contained herein or by specific conditions as approved by the Public Works Director. Upon completion of construction and prior to final plan approval, final 'as-built' construction plans and a written certification by a Licensed Professional Engineer that said improvements where completed in accordance with the approved construction plans must be submitted to the Public Works Director for approval.

4. Reports, plans and specifications previously submitted shall count toward meeting the requirements of Conditions #2 and #3 if accepted by the Public Works Director to the extent of the improvements for which they are determined to be sufficient.

5. Lyle Loop Road: Street improvements must be constructed to City standards as approved by the Public Works Director including 50 foot wide right-of-way, 32 foot wide asphalt pavement, concrete rolled (or better) curb and gutter, five (5) foot wide sidewalk on one street side and street illumination. The sidewalk shall be installed on the same side of the street as it is on the existing completed portion of Lyle Loop Road. Utility improvements shall be extended beyond street pavement edge to facilitate future extension where appropriate. Street grade shall not exceed 10%.

6. Lyle Loop Road shall be constructed in its entirety prior to the recording of Phase 1 or a temporary turnaround constructed to City standards shall be provided at the point at which it ends.

7. The private interior street shall be constructed as a hard-surfaced street to specifications approved by the Public Works Director prior to recording a final plat for Phase 3. The street shall have a minimum surface width of 20 feet. This improvement is not required as a condition of final plat recording beyond (east of) the point at which it enters Lot 6.

8. Covenants or a road maintenance agreement, providing for the perpetual maintenance of the private roadway and that establish a road maintenance fund shall be recorded with the Yakima County Auditor and a recorded copy submitted to the Selah Community Planner prior to recording the final plat.

9. Documentation of the proposed use and ownership of the common open space shall be provided prior to recording a final plat for any phase. Documentation shall include covenants, establishment of a homeowner's association or deed restrictions and they shall be recorded prior to recording any final plat. It may be combined with the covenants or agreement required for maintenance of the private roadway. Documentation shall also

establish or demonstrate legal access by all residents of the plat to the common open space.

10. Street illumination shall be installed by the developer at locations and to the specifications of the Public Works Director (typically at 300 foot intervals or as otherwise determined by the Director of Public Works in order to maximize illumination). Street lights shall be installed on metal poles.

11. All lots must be served with a full range of public and private services and utilities including public water and sewer, power, natural gas and telephone. All utilities except for the standard telephone box, transmission box and similar structures shall be underground and installed prior to the surfacing of streets. All utilities placed beneath streets, curbs or sidewalks shall be extended beyond these features to avoid them being disrupted by future extensions.

12. There shall be a moratorium on public street cuts for a period of five (5) years from the date of plat recording.

13. Fire hydrants shall be provided and installed by the developer at locations approved by the City of Selah Fire Chief and to the specifications of Selah Municipal Code, Chapter 11.30.

14. Final lot dimensions and lot area must substantially conform to the preliminary plat unless otherwise amended during the public hearing process.

15. Storm Water drainage facilities to accommodate runoff generated in the plat must comply with a drainage facilities plan prepared by a Licensed Professional Engineer and approved by the Public Works Director. Plans submitted previously will count toward meeting this requirement if approved by the Public Works Director. Additional documentation may be required for portions of the site not covered by any such previously submitted plans.

16. Prior to final plat recording, all required plat improvements (utilities, streets, drainage facilities, etc.) must be installed and accepted by the City or a surety bond pledged to the City to ensure installation of the plat improvements within two years of final plat recording.

17. Planned Development approval shall be in substantial conformance to the project design as described in the project narrative, application materials and on the face of the preliminary plat. Setbacks, building height and lot coverage shall be to the standards required in the R-1 district by the zoning ordinance. Lot size and lot width shall either

conform to the approved preliminary plat or meet minimum R-1 standards. This condition is not intended to preclude modifications otherwise allowed under SMC 10.24.110.

18. All required street signs, posts and appurtenances must be supplied by the developer and will be installed by the City.

19. The following note shall be placed on any final plat map:

> **"The owners shown hereon, their grantees and assignees in interest, hereby covenant and agree to retain all surface water generated within the plat on-site."**

20. Lots in Phase 3 shall be served by an 8 inch sewer line extended in the utility easement across Lots 9 and 10 and then continued to all of the individual Phase 3 lots in the access and utility easement as shown on the Preliminary Plat.

21. Prior to final plat recording, a surety bond, or such other secure financial method acceptable to the City, in the amount of 15% of the cost of the public improvements as determined by the Public Works Director (streets, sidewalks, street lights, drainage facilities, sewage collection and water distribution facilities, etc.) must be remitted to the City and will be held for a period of two years from the date of final plat recording to guarantee against defects in materials and workmanship.

22. Improvements required for the subdivision must be completed and the final plat must be submitted within the maximum time period required by RCW 58.17.140. If this decision is issued on or before December 31, 2014, that time period is 7 years. Otherwise, it is 5 years. A one-time, one-year extension may be authorized in accordance with SMC 10.50.033(c) but the request must be made before the 7-year time period ends.

23. Any changes to the plan or program shall be subject to review in accordance with Chapter 10.24 SMC.

From the foregoing Findings and Conclusions, the Hearing Examiner makes the following

V. RECOMMENDATION.

The application by Zuker-Sample Development LLC, to rezone property describe in the Preliminary Planned Development of Somerset II, dated January 13, 2014 from One-family Residential to Planned Development and to subdivide the same property into 24 single family residential lots, as specified in the application materials (File No. 912.42.14-05 and 914.42.14-04), should be DENIED without prejudice, with allowance for reopening the open record proceeding commenced in accordance SMC 10.24.060 to allow consideration of and public

EXHIBIT C

5

CERTIFICATE OF TRANSMITTAL

I hereby certify that we sent a copy of this to the attorneys for the ~~plaintiffs/~~defendants ~~by mail, postage prepaid, or by attorneys messenger service.~~ I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

via Hand delivery to Kenneth Harper via email & US mail to Robert Noe

Yakima, WA 12-24-08
Date

Jori Durand

FILED
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KIM ALLEN
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

SOUTH SELAH NEIGHBORHOOD ASSOCIATION, a nonprofit association, KATHLEEN FOUNTAINE, DAVE and KATHY HOFFERT, husband and wife, ART and PHYLLIS JOHNSON, husband and wife, and MICHAEL and MICHELLE TURNER, husband and wife, Petitioner, vs. CITY OF SELAH, WASHINGTON, A political subdivision of the State of Washington, TORKELSON CONSTRUCTION, INC., a Washington Corporation, JOE KELLY CONSTRUCTION, LLC, a limited liability company, CARL TORKELSON and JOE KELLY, Respondents.	NO: 08-2-01628-4 ORDER ON SOUTH SELAH NEIGHBORHOOD ASSOCIATION'S LAND USE PETITION ACT APPEAL *(with Judge Hackett)*

ORIGINAL

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On December 16, 2008, this matter came on regularly before the Court for oral argument on Land Use Petition filed by South Selah Neighborhood Association, a non-profit association, Kathleen Fountaine; Dave and Kathy Hoffert, husband and wife; Art and Phyllis Johnson, husband and wife; and Michael and Michelle Turner, husband and wife (collectively "SSNA"). Petitioners were represented by James C. Carmody; Respondent City of Selah was represented by Robert F. Noe; and Respondent's Torkelson Construction, Inc., a Washington corporation, Joe Kelly Construction, LLC, a limited liability company, Carl Torkelson and Joe Kelly (collectively "Torkelson") were represented by Kenneth W. Harper.

In rendering its decision, the Court reviewed and considered the entire record on appeal, including:

a. SSNA's Petition for Review dated April 29, 2008;

b. Stipulation and Order Setting Case Schedule dated June 2, 2008;

c. Stipulation and Order Setting Case Schedule dated August 13, 2008;

d. Petitioner's Opening Brief dated September 16, 2008;

e. Response Brief of Respondent's Torkelson Construction, et al dated October 21, 2008;

f. Motion to Supplement the Record of Respondents Torkelson and Kelly and Supporting Memorandum dated October 21, 2008;

g. City of Selah Joinder in the Response Brief of Torkelson Construction, et al dated October 22, 2008;

h. Petitioner's Reply Brief dated October 31, 2008;

i. Certified copy of the Administrative Record submitted by City of Selah; and

j. Verbatim Report of Proceedings for Hearings Before Hearing Examiner Pat Spurgin.

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Having thoroughly reviewed the entire LUPA-related record, including, but not limited to, the specific entries noted above, as well as the argument of legal counsel, this Court finds and concludes as follows:

1. This court has jurisdiction over the subject matter and parties.

2. City of Selah's environmental threshold determination as set forth in Mitigated Determination of Non-Significance (MDNS) dated July 20, 2007 is not clearly erroneous and Hearing Examiner's Decision on this issue shall be affirmed.

3. City of Selah complied with applicable procedures and/or processes with respect to environmental and permit processing including compliance with applicable building and fire codes, environmental review, concurrency and development standards and Hearing Examiner's Decision on such issues shall be affirmed, including review of grading requirements. RNH

4. Hearing Examiner erroneously interpreted and applied provisions of Selah Municipal Code with respect to permitted uses within the Multiple Family Residential (R-3) zoning district.

(a) Single-Family Dwellings are prohibited within the R-3 zoning district. "Single-Family" is defined as follows:

> Single-Family Dwelling means a structure designed exclusively for occupancy by one family and containing no more than one dwelling unit. This definition includes manufactured, and modular homes. See, also, "modular home."

"Multi-Family" Dwelling is defined as follows:

> "Multi-Family" Dwelling means a building or a portion thereof, designed for occupancy by three or more families living independently of each other, and containing three or more dwelling units. See, also, "Apartment."

(b) Torkelson originally proposed construction of twenty-four (24) single family residences within a planned unit development. The residence structures

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were based upon master plan submitted and approved by City of Selah. Structures proposed in the current development utilize the same plans and specifications for the building and structures. The original structures morphed into a purported multi-family structure.

(c) Buildings were connected by a non-structural causeway that appears cosmetic and has no structural utility. The connecting artiface serves no structural purpose or utility and is not designed to improve liveability of the separate building.

(d) Hearing Examiner erroneously interpreted the zoning ordinance.

(e) Hearing Examiner also erred in the application of the zoning ordinance to the facts of this application. The Court hereby reverses Hearing Examiner's Decision Approving Class I Use Application by Carl Torkelson Construction and Joe Kelly Construction for Five Purported Multi-Family Dwelling Units at 605 Southern Avenue, Selah, Washington.

5. Pursuant to RCW 36.70C110(4), Petitioners are entitled to reimbursement of costs associated with preparation of the verbatim transcript in the sum of ~~Nine~~ Four Hundred ~~Seventy-Four~~ Eighty-Seven Dollars (~~$974.00~~ $487.00). RNH Jr

6. Petitioners are entitled to award statutory costs and attorney's fees.

IT IS SO ORDERED.

DONE IN OPEN COURT this 9 day of ~~December~~ JAN, 2008.

Robert N. Hackett, Jr.

Honorable Robert N. Hackett, Jr.
Yakima County Superior Court Judge

Velikanje Halverson P.C.
405 East Lincoln Ave.
P.O. Box 22560
Yakima, WA 98907
(509) 248-6030

Presented by:

VELIKANJE HALVERSON, P.C.
Attorneys for Petitioners

By: _____
James C. Carmody, WSBA 5205

Copy received, notice of presentation waived:

TORKELSON CONSTRUCTION, INC. and JOE KELLY CONSTRUCTION, INC., and JOE KELLY CONSTRUCTION, LLC, CARL TORKELSON and JOE KELLY

By: _____
Kenneth W. Harper, WSBA #25578

CITY OF SELAH
Attorney for Respondent City of Selah

By: _____
Robert F. Noe WSBA 19730

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CITY OF SELAH

FINAL ADMINISTRATIVE APPROVAL BY THE ADMINISTRATIVE OFFICIAL

CLASS 2 USE DEVELOPMENT: MULTIPLE FAMILY RESIDENTIAL 6 – 12 DWELLING UNITS PER ACRE FINDINGS AND DECISION

FILE NUMBER: 926.45.15-02

ISSUE DATE JUNE 19, 2015

The Administrative Official, having reviewed the materials submitted in the application; documentation submitted by staff; a site view of the site and surrounding vicinity and public comments issues the following **NOTICE OF ADMINISTRATIVE APPROVAL OF A CLASS 2 USE:**

APPLICANT: Torkelson Construction, Inc. – PO Box 292, Selah, WA 98942

PROPERTY OWNER: Carl & Candy Torkelson

PROJECT ADDRESS: Bowers Drive

PROPOSAL: Construct a multiple family residential development consisting of five dwelling units attached to an existing single-family dwelling on a 0.53 acre property. Each unit is to be served by a separate driveway wide enough to accommodate two parking spaces. A 20 foot wide paved access road designated on the site plan as a temporary fire turnaround is also proposed. It occupies an access easement of the same width and straddles the project site and the adjoining lot to the south. A T-turnaround is proposed at the end of the road.

The project is on one of eight lots created in 2014 by short subdivision (referred to in this decision as short plat lots) for which there is a pending application for a 48 unit Planned Development. There is also a separate application for multiple family residential on a nearby lot at the intersection of E. Goodlander and Lancaster Roads.

The property is located at the north end of Bowers Drive approximately 550 feet north of E. Goodlander Road. The property is zoned Two-Family Residential (R-2) and designated Moderate Density Residential by the Comprehensive Plan. The maximum allowable density is 12 units per gross acre. The project is to be served with municipal sewer and water.

FINDINGS

1. In accordance with Selah Municipal Code, SMC 10.06.020(2), Class 2 administrative uses are generally allowed in the zoning district. However, the compatibility between a class 2 use and the surrounding environment cannot be determined in advance and must be reviewed. The Class 2 use may be conditioned in order to ensure compatibility and compliance with the provisions of the zoning district and the goals and policies of the comprehensive plan. If a Class 2 application cannot be adequately conditioned it shall be denied.

2. Conditions may be imposed by the reviewing official in granting a Class 2 application to accomplish the following as specified by SMC 10.06.060:

    a. Comply with any development standard or criteria for approval in Title 10 or other relevant provisions of the Selah Municipal Code.

    b. Mitigate material impacts of the development, environmental or otherwise.

    c. Ensure compatibility of the development with existing neighboring land uses and assure consistency with the intent and character of the zoning district.

    d. Ensure that proposed structures and areas are surfaced, arranged and screened in such a manner that they are compatible with and not detrimental to existing or reasonable expected future development of the neighborhood, or resource uses consistent with the comprehensive plan.

    e. Achieve and further the intent, goals, objectives and policies of the comprehensive plan and Title 10.

    f. A time limit to commence, complete the authorized action, or both must be prescribed by the administrative official. The granting of a one-time extension of either or both dates is allowed.

3. The proposed multiple family residence consists of six three story units connected by an extension of the second floor containing a closet for each of five units. Each unit is to have three bedrooms and two baths. Access is from a 26 foot wide access and public

service easement designated as Bowers Drive providing access to the site from E. Goodlander Road. The six units will front on a private road in a 20 foot wide access easement designated for fire turnaround.

4. The density of the proposal based on six units on the .53 acre subject property is 11.25 dwelling units per gross residential acre, conforming to the maximum of 12 units per acre as required by the zoning ordinance and comprehensive plan.

5. Surrounding land uses consist of a mixture of single-family residences on lots one half to one acre in size, vacant land, pasture and large landscaped yards. There is a residence to the east on a 1.68 acre parcel fronting on Lancaster Road, two residences to the north with access from Lancaster Road by private road, a residence to the west with access from Selah Loop Road by private road and a church to the west. To the south are 7 one-half acre lots with six similar single family residences and a large open sided agricultural building.

6. Zoning consists of Two Family Residential (R-2) within the City Limits on the north side of E. Goodlander Road and One-Family Residential (R-1) to the south. The R-2 zoned area includes the site, the seven short plat lots to the south and three other parcels fronting on E. Goodlander to the southeast and southwest, but not adjoining the subject property. The zoning of adjacent properties outside of the City Limits is One Family Residential (Yakima County – R-1). This includes all of the adjoining parcels except for the short plat lots to the south. Zoning is generally consistent with the future land use designations from the comprehensive plan. The R-2 zoned areas are designated Moderate Density Residential. The R-1 zoned areas are designated Low Density Residential, except for one lot on Lancaster Road which is designated Moderate Density Residential, the church to the west and Selah High School, to the south, designated Quasi-Public Open Space. Carlon Park is designated 'Park' by the Comprehensive Plan.

7. The existing density of the R-2 zoned areas to north of E. Goodlander Road including the subject property is 1.3 dwelling units per acre. With the project, the density increases to 1.8 units per acre. Including the pending applications with the City for this and surrounding properties, the density increases to 7.2 units per acre. The density of the R-1 zoned areas bounded by E. Goodlander, Selah Loop and Lancaster Roads (excluding property owned by the church) is 1.1 dwelling units per acre. The combined R-1 and R-2 zoned areas have a density of 1.2 units per acre, which increases to 1.4 units per acre with the project and 3.6 units per acre with the project and the other pending residential applications.

8. The purpose of the R-2 Two Family Residential zoning district is to provide for single or two-family residential development where urban governmental services are available or will be extended at no public cost (SMC 10.14.010). Specific intents of the R-2 zone are

to provide for an orderly transition from vacant or partially developed land to single-family or two-family residential uses, facilitate coordinated and collaborative public infrastructure improvements, require individual lot connections to water and sewer, require development to meet minimum urban development standards and ensure that R-2 uses facilitate future residential development and utilities.

9. The minimum lot size in the R-2 zone where municipal sewer and water is being provided and where slopes are less than 10 percent is 9,000 square feet. Proposed development must assure adequate setbacks, buffering of adjoining uses and sensitivity to physical features. Multiple family dwellings up to 12 dwelling units per acre (DUA) are permitted Class 2 uses by Table 10.28A-5. There are no regulatory notes given for this use.

10. The subject parcel is 0.53 acre or 23,223 square feet, meeting the minimum lot size. Setback, lot coverage and other zoning ordinance standards are as follows:

    a. Front setback: 30 feet from south property line centered in the private access easement.

    b. Side setbacks: 8 feet from east and west property lines.

    c. Rear setback: 20 feet from the rear property line.

    d. Maximum lot coverage is 50% (buildings only).

    e. Building height is 35 feet.

    f. Any dumpsters must be screened from view from any public right-of-way.

11. All of these standards are met or exceeded. The proposed front setback is 30 feet from the south property line, which is also necessary in order to provide parking that meets minimum dimensions. The proposed side setback is 14 feet from the west property line and over 75 feet from the east line. The proposed rear setback is 23 feet. Proposed lot coverage is 20.6%. Proposed building height is 32.5 feet. Since there is no public right-of-way in the immediate vicinity, it is unlikely that dumpsters would be visible from one.

12. Off-street parking requirements for a multiple family dwelling with six or more dwelling units is 1.5 spaces per unit. The applicant is proposing to use 20 foot by 24 foot concrete driveways at each unit for parking. This is the equivalent of two spaces per individual unit that are 12 feet wide, rather than 10 feet, exceeding both the standards for the number of spaces and parking space width. Required surfacing is two-inch thick asphalt on aggregate base or equivalent and grading and drainage so that no water drains across

sidewalks. Parking is not shown on the site plan for this application, but was determined from the site plan submitted for the Planned Development. As proposed, parking being provided is in groupings of two spaces provided for each individual dwelling unit rather than in a single parking area.

13. The proposal, consisting of six residential units, parking for less than 40 vehicles and excavation of less than 500 cubic yards would normally be categorically exempt from SEPA review by SMC 11.40.110(a), (d) and (e). However, as part of a larger proposal (based on the concurrent application for Planned Development), it is not considered to be exempt based on the SEPA requirements of WAC 197-11-305. Under the requirements of WAC 197-11-305(b)(ii) the agency may proceed with the exempt aspects prior to conducting environmental review if the requirements of WAC 197-11-070 are met. Those requirements are that the exempt actions not have an adverse environmental impact or limit the choice of reasonable alternatives. The SEPA Responsible Official's determination that this application may proceed before SEPA review for the larger project is completed is based on the following findings and conditions:

    a. No additional units of the concurrently proposed Planned Development may be constructed until environmental review is completed.

    b. All of the development standards of Title 10 are being met by the proposed application. Subdivision standards are not being considered since this Class 2 application is being developed on existing platted lots and does not require approval under the subdivision ordinance.

    c. If the Planned Development were not completed, the proposed use could stand alone; it does not require the completion of additional units on the adjoining properties in order to function.

    d. The maximum number of dwelling units accessing E. Goodlander Road would be 20, which does not require a second access point under the Fire Code.

    e. Class 2 Review gives the administrative official the authority to impose conditions to the extent that compatibility impacts are identified.

14. The project consists of individual three story living units connected by a closet on the second level which provides for a functional space. This is being done to meet the definition of "Dwelling, Multifamily" as a building or portion thereof, designed for occupancy by three or more families living independently of each other, and containing three or more dwelling units.

15. A number of comment letters were received. Issues are generally in the following

categories:

a. Impacts including traffic, inadequate roads and facilities, incompatibility and inconsistency with surrounding residential areas.

b. Concerns about project density and objection to rentals.

c. Consistency of project design with definition of multiple-family residence.

d. Procedural issues including the consideration of this application simultaneously with Planned Development and SEPA decision.

e. Legality of private roads and existing dwellings and the extent to which a variance previously issued for the short plats is limited to specific use or number of units.

16. The intent of the Moderate Density Residential land use designation of the comprehensive plan is to provide predominantly moderate density residential development of up to 12 dwelling units per gross acre, with clustering of dwelling units to preserve open space, steep slopes, drainage ways, etc. Predominant land uses are two-family, townhouse, condominium dwellings with a mix of single-family and multiple-family residences. The mix of housing types is to be limited by the maximum density and zoning standards will assure compatibility (Selah Urban Area Comprehensive Plan pp. 33-34).

17. Applicable comprehensive plan policies include encouraging new residential development to approximate existing residential densities and housing mix levels (HSG 2) and encourage the combined net density of all residential development to remain at present levels (HSG 2.1). Minimize the negative impacts of medium and high-density residential projects on adjacent low density residential areas but encourage mixed use/density projects (HSG 3). Encourage new residential construction to be compatible with existing residential development (HSG 4).

18. The project is consistent with the maximum density of the moderate density residential designation and with SMC 10.28. Although the predominant use of this mostly undeveloped area of R-2 zoning is not yet two-family residential, multiple family residential is considered to be usually permitted. Zoning standards intended to assure compatibility are being met.

19. Incompatibility concerns as indicated by comment letters include the use of private roads, view obstruction, building height and architecture and project density.

20. The private road exists, having been approved by an earlier decision that was not

appealed. Access to an existing private road is not prohibited for the proposed use. The private road is not shared with the properties that adjoin the site (except for the short plat lots that are under the same ownership) and does not access the same public roads. Access to the site and the other short plat lots are to Goodlander Road. The other adjoining properties gain access from Selah Loop or Lancaster Road. Issues such as traffic impacts and suitability of the private road for the larger development project is being considered under SEPA for the Planned Development.

21. View obstruction and architectural style is not regulated by zoning regulations or addressed by the comprehensive plan except in a very general way. Both are subjective issues and attempting to regulate them without clear standards can result in inconsistent decisions. This is especially the case for view obstruction given the topography of much of the City. The existing buildings and those proposed by this application meet building height and all setback standards.

22. Density, although characterized as high by some of the comment letters, is within the definition of moderate density and conforms to the comprehensive plan designation and zoning standards. It is higher than the existing net density of surrounding areas, but two factors should be considered: The Moderate Density Residential land use designation of the subject property is intended to have a higher density than the Low Density Residential designation of surrounding areas, and the surrounding areas are not yet fully developed, with several vacant parcels and areas on existing residential parcels that are large enough to be subdivided into smaller lots.

23. Some comment letters contend that the variance and previously approved short plats do not allow the development of these units or anything more than a duplex on the subject lot. However, the Planning Commission decision recommending approval to the City Council and City Administrator contains the following note:

> "Although requested to do so by the opponents of the proposed short plats, the Planning Commission is not recommending the imposition of any conditions dictating what type of structures can be built on any of the individual lots created, the configuration of such structures, or any other conditions related to the construction of structures on the lots based upon speculation of what may occur at the site. There is no legal basis to do so at this time. Because the property is within the R-2 zone, a duplex may be constructed on each lot consistent with the zoning designation. The structures will go through the City's permitting processes to ensure compliance with applicable development and building codes. In the event Mr. Bowers seeks to construct something that is not otherwise expressly permitted within the City's codes, he will be required to go through review processes and through those processes there may be the imposition of certain conditions based upon what is actually presented as a development proposal at that time."

In accordance with this statement, the land use proposed by this application is permitted in the R-2 zone. If not considered to be "expressly" permitted, it is subject to the required review process that provides for the imposition of conditions. This is consistent with the statement made by the Planning Commission.

24. There is a shortage of affordable upscale rental housing units in the City. The design and characteristics of the proposed units provide for this type of housing.

CONCLUSIONS

1. The project complies with the developments standards of Title 10, Selah Municipal Code. In particular setback, height and lot coverage standards are met.

2. The project is consistent with the intent and character of the R-2 zone and the Moderate Density comprehensive plan designation including density.

3. Surfacing, arrangement, screening of proposed structures and improvements are compatible with existing and reasonably expected future development.

4. The present and future needs of the community will be adequately served by the proposed development. The community as a whole will benefit rather than being injured. In particular, the proposal helps to meet a need for more upscale, affordable rental housing in the community.

DECISION

Class 2 Review of a multiple-family residential development consisting of five dwelling units attached to an existing single-family dwelling is approved subject to the following conditions:

1. An access easement shall be established along the south property line for the proposed "temporary fire turnaround" on the boundary between the lot and the adjoining lot to the south prior to issuance of a certificate of occupancy.

2. Proposed parking areas (i.e., residential driveways) shall be constructed of concrete as proposed by the application. The "temporary fire turnaround" shall be hard surfaced, 20 feet in width and constructed to Fire Code requirements. It has been assigned the name "Whisper Way" for addressing purposes. A sign bearing that name shall be installed to assist emergency responders in finding and identifying the road.

3. The applicant shall have one year from the date of this decision to complete the authorized improvements and conform to the requirements. The completion date may be extended in the manner provided for by the municipal code.

A copy of this Notice of Administrative Approval of a Class 2 Use by the Administrative Official is being mailed to the applicant and all persons responding to the initial Notice of Development Application. This decision will be final and conclusive unless appealed by 5:00 P.M., June 29, 2015 in accordance with Selah Municipal Code, Chapter 21.11. Any appeal filed must contain specific factual objections and be accompanied by the $330.00 appeal fee. Contact Thomas R. Durant, Community Planner at (509) 698-7365 to read or ask about appeal procedures.

ADMINISTRATIVE OFFICIAL: Donald C. Wayman

POSITION/TITLE: City Administrator

ADDRESS: 222 South Rushmore Road, Selah, Washington 98942

DATE: June 19, 2015

SIGNATURE:

HALVERSON | NORTHWEST
LAW GROUP

Raymond G. Alexander
Adam K. Anderson
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J. Jay Carroll
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Terry C. Schmalz+
Linda A. Sellers
Michael F. Shinn
Sara L. Watkins*
Stephen R. Winfree

*Also Oregon Bar Member
+Of Counsel

June 26, 2015

HAND DELIVERED

Selah City Council
115 West Naches
Selah WA 98942

Re: Our Client/Appellant: **John and Helen Teske**
Matter: **Appeal of Final Administrative Approval of Torkelson Class 2 Use Development (Selah File No. 926.45.15-02)**
Applicant: **Torkelson Construction, Inc.**
Property Owner: **Carl and Candy Torkelson**

Dear Mayor Gawlik and Council Members:

This letter will serve as the Notice of Appeal of our clients, John and Helen Teske, who reside at 182 Lancaster Road in Selah, Washington, of your decision dated June 19, 2015, to approve a Class 2 use development for the above Applicant and Property Owner. This Appeal is being filed in accordance with the appeal procedures set forth in SMC 21.11, et seq., and includes the $330 appeal fee in the form of a check payable to the City of Selah (check no. 105172). The Teskes directly adjoin the Torkelson project at its north property line and is one of the residential property owners most directly affected by the development, and as such, clearly have the legal standing to file this Appeal. The specific reasons for this Appeal and their opposition to the Class 2 use were set forth in a detailed letter provided to the reviewing official prior to making a decision dated June 10, 2015, a copy of which is attached hereto as **Exhibit A.**

The Teskes believe the administrative official's Findings and Decision dated June 19, 2015, and/or the processing of the application to be incorrect for the following reasons:

1) The reviewing official, Don Wayman, had a clear and extreme conflict of interest and should not have issued a decision on the Class 2 application because he lives in the development at issue, has a contractual relationship with the Applicant and Property Owner (they are his landlord), and on information and belief, had ex-parte contacts about the development, which makes his approval of this hotly contested development a violation of municipal law, including Washington's Appearance of Fairness Doctrine (RCW 42.36, et seq.). In almost 30 years of land use practice, the undersigned has never witnessed a reviewing official or member of a quasi-judicial body fail to recuse himself in such a circumstance, and in instead ignore the Doctrine in order to make a significant discretionary decision for the development in which he lives for an applicant with whom he has a contractual and financial relationship. The decision to summarily approve the Class 2 use without a hearing (which the City readily admits is really part of a larger project) calls the entire process into question, forcing adjoining homeowners to file expensive appeals for substantially the same development that is already under parallel review. It is difficult to justify why the reviewing official chose not to exercise his discretion set forth in SMC 10.06.040(6)(e) to refer the Class 2 application in which he had a direct conflict of interest to the Planning Commission or, perhaps in this case, the Hearing Examiner who is already in the process of conducting an open-record hearing on an almost identical application from the same developer. As legal counsel to the Teskes, we reserve the right to conduct limited discovery in the appeal or quasi-judicial process to confirm the substance, time and date of ex-parte contacts between the reviewing official and the Applicant and Owner, the terms of their landlord/tenant relationship and

any other items that may lead to violations of applicable municipal law and Washington's Appearance of Fairness Doctrine.

2) The application was not complete in accordance with Title 21.

3) The processing and approval of the application failed to comply with the procedural and substantive aspects of the State Environmental Policy Act (SEPA). The application and proposed development was part of a larger proposal subject to SEPA whose applications were pending (a planned development, rezone and plat). SEPA review should have been conducted in accordance with local and state procedures before a decision was made. The reviewing official's Findings #13, to the contrary, is not supported by any substantial evidence in the record and/or is clearly erroneous. No conditions were imposed to mitigate the obvious compatibility impacts on the Teskes' property, and the processing and approval of the Class 2 use application clearly limits the choice of reasonable alternatives of pending applications involving the same property. Provisions of the Selah Municipal Code clearly authorize the administrative official and Selah City Council to impose conditions on the property and project, which among other items, could limit the number of units on the property, limit the height of units, increase setbacks, create green spaces, require fencing, et cetera, all of which would be precluded if the Class 2 use is approved and the units are built.

4) The proposed 6-plex does not meet the definition of a "multi-family dwelling" under Appendix A to the Selah zoning ordinance, and instead is an illegal attempt by the Applicant to put six separate townhouses on one lot, in a near identical configuration to a pending planned development, rezone and plat. Despite a nonfunctional closet connection, the project remains six separate buildings prohibited on one lot under the zoning ordinance.

5) The proposed development does not make adequate provision for water, roads and other infrastructure improvements to serve the development (SMC 10.06.060), including failure to mitigate traffic impacts to Goodlander Road and the intersection of Lancaster Road and Goodlander, and approval and construction of a portion of the project limits the ability of the City to require wider and more functional interior roads for the remaining portion of the project under review.

6) The Findings and Conclusions of the reviewing official in the decision failed to address and comply with the review criteria for Class 2 use applications, including those set forth in SMC 10.06.020(2), which expressly require conditions to "ensure compatibility and compliance with the provisions of the zoning district and the goals and objectives and policies of the Comprehensive Plan, and if not, the Class 2 application must be denied." Given obvious compatibility conflicts with adjoining, low-density, R-1 neighborhoods, the reviewing official failed to impose a simple condition to mitigate the material impacts of the development, environmental otherwise, to ensure compatibility of the development with the existing neighboring land uses, including the Teskes' adjoining low-density R-1 use, to achieve the goals, objectives and policy of the Comprehensive Plan, and "to ensure that the structure and areas proposed are surfaced, arranged and screened in such a manner that they are compatible with and not detrimental to existing or reasonably expected future development of the neighborhood ... ". SMC 10.06.060(a)&(b).

7) Approval of the Class 2 use is inconsistent with the goals and policies of the Comprehensive Plan, including without limitation, failure to upgrade the character of existing residential neighborhoods (Objective HSG 1) and failure to encourage residential development to approximate existing residential densities and housing mix levels (Objective HSG 2), and any finding and conclusions to the contrary are not supported by substantial evidence and/or are clearly erroneous.

8) The Class 2 use constitutes an illegal phased development where the project Applicant and Owner is trying to do incrementally what is and should be subject to more advance or detailed review under SEPA, and the planned development, rezone and plat ordinances of the City.

9) The decision on the Class 2 review should have been put on hold pending processing of the application of the entire Torkelson Whispering View Estates project, which is awaiting completion of SEPA, and an open-record public hearing before the Hearing Examiner.

10) Without limiting the generality of the prior grounds, Findings 13-24 are not supported by any substantial evidence in the records and are incorrect, and all Conclusions 1-4 are clearly erroneous, based on the record.

11) The Teskes reserve the right to supplement these reasons for appeal based upon a review of the administrative record, which should include the administrative record on the pending rezone and plat.

For the reasons set forth above, the Teskes as Appellants, request that the decision of the administrative official be reversed and that the Class 2 use application be denied, or as an alternative that the City Council reverse and repeal the decision and remand the Class 2 application for the development of the record before the Hearing Examiner, using the same process as the Applicant's and Owner's pending application for a planned development, rezone and plat, and that a final decision on the Class 2 use (or this Appeal) be made by Council at such time.

The Appellants object to the bifurcated process imposed upon them by forcing them to appeal a decision by the same Applicant and Owner of the same development before SEPA is conducted and the record is prepared. As a matter of judicial economy and administrative convenience, the Teskes would expressly request the City Council acting in its appellate and quasi-judicial capacity to assume jurisdiction over the appeal, and process the Appeal contemporaneously with its decision making authority on the other pending applications by the Owner and Applicant. Building permits for that portion of the Torkelson project approved by the administrative official should not be issued until all appeals are resolved and decisions on the integrated, larger project are made.

Yours very truly,

HALVERSON NORTHWEST LAW GROUP P.C.

Mark E. Fickes

Mark E. Fickes

MEF:tia
Enclosure
CC: Dale Novobielski, Selah City Clerk
John and Helen Teske

EXHIBIT A

HALVERSON | NORTHWEST
LAW GROUP

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*Also Oregon Bar Member
+Of Counsel

June 10, 2015

VIA HAND DELIVERY

City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
Attention: Donald C. Wayman, City Administrator
222 Rushmore Road
Selah WA 98942

Re: Our Client: Helen and John Teske
Matter: Comments Opposing and Requesting Denial of Torkelson's Application for Class 2 Review (File No. 926.62.15-01 and/or 926.45.15-02)

Dear Mr. Durant and Mr. Wayman:

As the City is aware, our office represents one of the residential home owners most directly affected by the proposed Torkelson development, John and Helen Teske, who reside at 182 Lancaster Road in Selah, Washington. The Teskes were surprised and disappointed to see that the City has decided to process a Class 2 Use Application in an attempt to build what, fundamentally, is the same 48-unit townhouse development, while Torkelson's rezone and planned development application still is pending. This decision increases the complexity, expense to City and neighbors, and could result in inconsistent decisions and results. For the reasons which will be outlined in this letter, the Teskes and others in the neighborhood believe this new application is procedurally and substantively defective, and should be denied, postponed, or at the very least, the administrative official should allow the application to be reviewed at an open public hearing before the Examiner, consolidating the processing of what is, essentially, the same incompatible development.

The Teskes' continuing position is the rezone, planned development and Class 2 Use to build as many view-obscuring townhouses as Torkelson can erect on his lots to the detriment of the neighbors is procedurally and substantively defective, and should be denied. Attached to this letter as Exhibit A are the Teskes' written comments opposing the Whispering View Estates planned development, dated March 29, March 30, and June 10, 2015. The same procedural defects, environmental impacts and compatibility issues are present in the Class 2 Application which require its denial.

Procedurally, this applicant is making a mockery of the City of Selah zoning ordinance, Planning Department, and possibly the reviewing official.. The applicant obviously feels emboldened by a similar 24-unit development in South Selah that resulted in years of litigation between the City, the neighborhood and the applicant. However, there are procedural and compatibility differences in this larger, denser development next to the high school and low-density R-1 development, which should result in its denial. An aesthetic or non-functional closet connection should not magically turn six, free-standing, single-family buildings into a "multi-family dwelling" as defined in the City's

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Sunnyside Office: 910 Franklin Avenue, Suite 1 | PO Box 210 | Sunnyside, WA 98944 | p) 509.837.5302 | f) 509.837.2465

zoning ordinance (or at least it should not under any reasonable interpretation designed to protect Selah's residential neighborhoods). Based on the Site Plan attached to the Class 2 Notice, it is the Teskes' position that the proposed 6-plex is not an "apartment" or "multi-family dwelling" which is even entitled to Class 2 review, but is simply an illegal attempt by the applicant to put six separate townhouses on one lot, in an almost identical configuration to its pending planned development (requiring environmental review, a rezone and plat, as it should).

Even if the City elects to process this questionable Class 2 Use Application, it should be denied, conditioned or changed for obvious compatibility reasons. **Class 2 uses are not allowed outright.** Selah Municipal Code recognizes that a Class 2 use may be incompatible at a particular location. **If a Class 2 application cannot be adequately conditioned, it shall be denied.** SMC 10.06.020. The reviewing official (or, in this case, as will be outlined below), the examiner or planning commission – after a public hearing – has "broad authority" to impose special conditions or, ultimately, deny incompatible Class 2 Use Applications. *See,* SMC 10.06.060(a) and (b). If cramming 48 townhouse units on four acres across from the high school, next to high-quality, low-density, residential zones cannot meet the criteria for a rezone, plat and planned development, the same project should be denied for compatibility concerns by the reviewing official where it has, functionally, the same footprint and impacts on the neighborhood.

The applicant's attempt at bifurcated processing of multiple applications for substantially the same development are putting burdens on the City and neighborhood that should not be allowed. The submittal of the Class 2 Use Application seems to be an admission from this applicant that the chance of success on the rezone and planned development are slim, following completion of appropriate SEPA review for the development (which is still pending). After receiving notice of the public hearing, the Teskes will be filing a legal brief demonstrating that the 48-unit planned development does not meet the legal criteria and is incompatible with the neighborhood for many of the same reasons the Examiner recommended denial (and the Council accepted the Examiner's recommendation) for the Somerset II development (See File Nos. 912.42.14-05 and 94.42.14-04). In fact, before making any decision, the Teskes would specifically request the reviewing official and/or the Examiner or Planning Commission (who should be making this decision) specifically review the Examiner's written recommendation in the Somerset II case, which demonstrates why dense townhouse developments on small lots are inconsistent with low-density residential neighborhoods. For convenience, a true and correct copy of the Examiner's Decision is attached to this letter as Exhibit B.

Before summarizing additional reasons why the Torkelson's Class 2 Application should be denied, the Teskes are asking the current City Manager, acting as the reviewing official, Mr. Don Wayman, to exercise his express authority to refer this Class 2 Application to the Hearing Examiner under SMC 10.06.040(6), and that its processing be consolidated with the applicant's rezone application and plat for substantially the

same development. Because he lives in the Torkelson development under review, the reviewing official, Don Wayman, also should legally be precluded from making a decision on the Torkelson Class 2 Application because of potential violations of Washington's Appearance of Fairness Doctrine RCW 42.36, et seq.

Procedural Defects and Request for Consolidated Processing

It is clear from the applicant's Class 2 Application (and the City's own notice) that Torkelson's goal is to build 48 townhouse units on the property he recently bought from the Bowers family, whether done at once through a planned development, plat and rezone, or done through eight Class 2 Applications (trying to connect six or more separate, single-family townhouses together on his eight lots). The results and impact on the neighborhood are the same. There already is a quasi-judicial process started and initiated by this applicant, which actually is the proper way to process such a large, dense development. Even if there is not a legal impediment to a single applicant processing two applications on the same property at the same time, the reviewing official should simply exercise his express authority under the municipal code to refer the Class 2 Application to the Examiner for purposes of conducting a public hearing and rendering a decision on the proposal; unless the reviewing official is prepared to deny the Application outright. *See*, SMC 10.06.040(6)(e).

Our clients (and the neighborhood) believe that referral to the Examiner for decision making authority is required by Washington's Appearance of Fairness Doctrine, because it would be inappropriate for Selah's administrative official (Don Wayman) to make a decision directly involving the development and home which he lives. Based on information and belief, Mr. Wayman currently resides in one of the Torkelson townhouse units already constructed on the property, and his landlord is, in fact, the applicant. In order to maintain the integrity of the Class 2 review process, referring the Class 2 Application for consolidated processing by the Examiner is the only proper result.

No action should be taken on the Class 2 Application before the almost identical application for a rezone and plat is processed. Any process or decision on the Class 2 Use Application should be referred to the Hearing Examiner for purpose of conducting a public hearing, and rendering a decision on a proposal with the obvious compatibility impacts of Torkelson's Whispering View Estates project.

The Torkelson Class 2 Application Should be Denied.

First, the Application should not be processed because the development as proposed does not meet the definition of a multi-family dwelling under the Selah zoning ordinance. *See*, Appendix A to SMC. A multi-family dwelling by definition is limited to a "single building." Connecting six separate townhouse residences by a non-structural closet with no shared common walls does not change this fact. The owner/developer knows he cannot put six separate single-family homes on one lot, so he proposes to connect them with a cheap, non-functional closet connection for the sole purpose of

circumventing restrictions in the zoning code. In a 2009 ruling by the Yakima County Superior Court where this same developer made the same argument, the Court determined that connecting what otherwise were free-standing, single-family townhouse structures by an overhang did not turn them into "multi-family dwellings" under Selah's zoning code when the Court held:

> "Buildings were connected by a non-structural causeway that appears cosmetic and has no structural utility. The connecting artifice serves no structural purpose or utility and is not designed to improve liveability of the separate building."

A copy of Judge Hackett's January 9, 2009, ruling is attached as Exhibit C for the reviewing official's and the Hearing Examiner's review.

The Application as presented does not meet the standards for Class 2 review approval and should be denied by the reviewing official. Torkelson's new Class 2 Use Application obviously will be "Phase I" of the Whispering View Estates project. In other words, what this developer clearly is trying to do – if and when his planned development and rezone is denied (which it should be) – is simply asking the City to approve a Class 2 review for six units on each of the same eight lots, constructing the same development in phases, where the only difference is connecting the single-family townhouses with the non-structural closet connections. The compatibility, cosmetic, traffic and environmental impacts are all the same. To quote an overused, but appropriate expression, even with "lipstick," the project is still a "pig."

Selah's municipal code recognizes the Class 2 uses may be incompatible at a particular location, and if they cannot be adequately conditioned, they shall be denied. SMC 10.06.020. This is clearly the case with Mr. Torkelson's latest attempt to maximize the number of townhouse units that can be squished onto a piece of property he owns. **Under the Selah Municipal Code, the reviewing official deciding Class 2 review applications must make specific written findings that "the present and future needs of the community will be adequately served by the proposed development, and the community as a whole will be benefitted rather than injured."** SMC 10.06.040(8)(A).

The official (and/or the Examiner in this case) also has the power to deny the application or impose conditions to comply with development criteria, to mitigate material impacts, to ensure compatibility of the development with existing neighboring land uses, and adjoining districts, and to ensure that structures and areas are surfaced, arranged and screened in such a manner to be compatible and not detrimental to the neighborhood, and achieve the intents and goals of the Comprehensive Plan. *See*, SMC 10.06.060(a). These general criteria are similar in nature to what Torkelson must show to have a rezone or planned development approved. If provided an opportunity to present information and evidence at a hearing, the Teskes and surrounding residential home owners will be able to clearly demonstrate the following:

(1) The proposal is not compatible and not in harmony with the surrounding area because it allows way too many units (in this case, six units on a 23,000 square foot lot), it blocks the view and the units tower over adjoining residences, its development is served by substandard streets, and the box-like townhouse structures specifically designed for non-owner occupied use simply do not fit in with the neighborhood at the requested density and design;

(2) The proposed development violates many goals and objectives of the Comprehensive Plan, including failure to encourage economic growth (Objective LUGM 3), failure to upgrade the character of existing residential neighborhoods (Objective HSG 1), and failure to encourage residential development to approximate existing residential densities and housing mix levels (Objective HSG 2);

(3) The public facilities and roads are inadequate, as dense development such as the one proposed should be served by public streets, not substandard private roads, and at its obviously intended full build-out, road improvements along Goodlander will not be adequate, including sidewalks, bus stops and the lack of a turning lane; and

(4) Present and future needs of the community (which includes the surrounding neighborhood) will not be adequately served by the development, and the community as a whole will be harmed rather than benefited, in express contradiction to the required finding to approve a Class 2 review. *See* SMC 10.06.040(8)(A).

The Teskes and the neighborhood believe a development of this size should not be served by a 20-foot private road on a 26-foot easement. They do not understand why the City of Selah's Public Works Department does not feel the same. The City subdivision ordinance has an express provision that normally requires each and every lot to be served by a city street, which would require 50 feet of right-of-way and 32 feet of paved surface, in addition to other improvements. **This developer received a variance only to serve an 8-lot short plat with a maximum of 15 or 16 units (*See*, City of Selah File No. 913.45.14-04).** At that time, City council had reservations as to whether or not such a small private road was suitable to serve even eight lots. The record is clear that the variance granted by the City was not approved to serve a 48-unit townhouse city, which is now being proposed.

The applicant's proposal – even for a Class 2 review – should be reviewed in the context of a 48-unit townhouse development at full build out. If the City will not enforce and require city streets (with curbs, gutters, sidewalks and adequate room for on-street and off-street parking) in the context of a 48-unit townhouse development, it will set an unnecessary and unwarranted precedent that all developers will point to to avoid wider, more efficient (but more expensive) infrastructure improvements. Of course, if this

applicant had to meet normal road development standards (which were, in part, designed to protect and make developments more compatible with the surrounding neighborhoods), he could not put as many units on the property as proposed. This is why cities have subdivision and development standards.

Neither his plat nor a series of related Class 2 use applications should be approved without the requirement that he dedicate sufficient right-of-way to build a public street, now that his development intentions are known. Most developments even close to this size would have wider streets with at least two access points to a public road. Of course, Torkelson has made widening the road more difficult by building existing, single-family units that immediately abut the road. This should not matter, as the applicant himself has caused the problem. Whether it be roads, impervious surface, site screening or lot size, this developer and development seeks to maximize the number of units on his property to the detriment of the neighborhood. This is something the City of Selah and its normal development standards should be designed to protect against. This applicant is not entitled to what amounts to a second variance to serve a larger, denser, incompatible development by a private road.

In his application, the developer – and at times it seems the City – incorrectly states that multi-family dwellings consistent with density standards must be approved. This simply is not true for the reasons set forth above. As the Examiner and the City itself noted recently in the Somerset II decision, maximum densities allowed under the Comprehensive Plan are just that – maximum densities allowed, not targets; and developments that are not compatible with the Comprehensive Plan, neighboring land uses, or that do not otherwise meet the standards in the zoning ordinance should be denied.

This applicant has little hope of receiving approval of a rezone and planned development in light of the Somerset II decision, and because this even denser and more incompatible development fails to meet the review criteria. He should not be able to achieve the same results through a series of related Class 2 use applications. In this case, the City itself has admitted that this Class 2 Application is **"part of a larger project consisting of a series of actions ..."**. This is why an upfront environmental review should be completed, the Application should be reviewed and consolidated with the pending applications for a rezone and planned development and, ultimately, should be determined following an Examiner's recommendation and decision by the City Council. Development standards should be applied based on the whole project, not xi unit phases where the owner's intentions are clear. The reviewing official should not take any action contrary to the zoning code or which undercuts that ability of the adjoining property owners to have their concerns heard and considered by the ultimate decision-making authority – in this case, the City Council.

In this case, the City has elected to accept an application for a Class 2 review with a larger project and development application pending. The adjoining landowners, including the Teskes, believe this to be inappropriate. Contrary to the recitations in the

City's Notice, the proposal (a 6-unit, multi-family project) is, in reality, six, illegal, single-family residences connected by a non-structural artifice (one that does have adverse environmental impacts and does limit the choice of reasonable alternatives). If a Class 2 use was approved, Torkelson could, in essence, build in phases the same 48-unit dense development out of the exact same footprint that Council and the Examiner are likely to find inconsistent with the surrounding neighborhoods and Comp Plan when a decision on the plat and rezone are made. Such a result would be ridiculous.

It is a reviewing official's job to interpret and apply the zoning code in a fair and consistent manner. In this case, if the development fails as a rezone and plat, as a matter of law it should fail as a Class 2 review if the footprint and impacts on the adjoining, low-density, residential neighborhoods do not change.

This letter should be considered the initial comments on the Class 2 use proposal from the adjoining landowners and John and Helen Teske. The Class 2 Application should not have been accepted as complete under a reasonable interpretation of the zoning code. However, because it has been and because the City admits that it is a part of a larger project, any decision and processing of the Class 2 Use Application from Torkelson Construction should be referred to the Hearing Examiner to be processed with the pending rezone and plat.

Yours very truly,

HALVERSON NORTHWEST LAW GROUP P.C.

Mark E. Fickes

Mark E. Fickes

MEF:tia
Enclosures
CC with encl: Bob Noe, Selah City Attorney

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1967-2014

August 21, 2015

Selah City Council
115 W. Naches Ave.
Selah, WA 98942

Re: Response to Mark Fickes letter dated August 21, 2015

Dear Members of City Council:

This letter is provided in response to attorney Mark Fickes' August 21, 2015 letter to the City Council arguing that the City Council cannot engage in an executive session at the beginning of its August 25, 2015 council meeting. Mr. Fickes' argument is without merit. First, it lacks merit because it is a misstatement of the law (he has confused executive sessions with closed sessions) and second, because his argument is based on presumptions that are simply incorrect (he presumes that the Council will be presented with facts – evidence – during the executive session that should only come through an open hearing process and that such facts will constitute ex parte communication). The discussions in executive session will be limited to legal advice.

The purpose of the executive session is to permit the City Attorney to provide legal advice to the Council, which is a clearly permissible basis for conducting an executive session under the circumstances. Also, the City Attorney will be speaking to the Council in executive session and providing advice on another matter unrelated to, and in addition to, anything for which Mr. Fickes will be appearing before the Council.

The Open Public Meeting Act (OPMA) provides at RCW 42.30.110, in relevant part:

> Executive sessions.
>
> (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:
>
> . . .(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party,

> when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.
>
> This subsection (l)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (l)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:
>
> (i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
>
> (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
>
> (iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency.

Mr. Fickes essentially asserts that the OPMA does not apply to quasi-judicial proceedings and, therefore, the provisions for executive session do not apply. His argument confuses closed sessions and executive sessions. Attached is an article from MRSC addressing this distinction. Technically, under the OPMA, quasi-judicial proceedings can be conducted in closed session (not open to the public). But because there are other statutes requiring quasi-judicial land use matters be conducted in open public hearings, they are conducted in open public meetings and, as a consequence, must comply with OPMA. The OPMA and its provisions would not apply to a closed session.

Very truly yours,

Robert F. Noe

Attachment as indicated.

MRSC
Local Government Success

What's the Difference Between a Closed Session and an Executive Session?

October 25, 2012 by Joe Levan (/Home/Stay-Informed/MRSC-Insight.aspx?aid=110)
Category: Open Public Meetings Act (/Home/Stay-Informed/MRSC-Insight.aspx?catID=103&cat=Open Public Meetings Act)

Although the terms "closed session" and "executive session" are used by some to refer to the same thing, there is a significant distinction between the two types of sessions, and I think it's important to understand that distinction to avoid confusion.

The term "executive session" is used explicitly in the Open Public Meetings Act (OPMA), chapter 42.30 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30) RCW, to refer to situations in which a governing body, *as part of a regular or special meeting*, can meet privately during that public meeting to discuss certain topics. RCW 42.30.110 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.110)(1) sets forth the topics that can be discussed in executive session. If the topic to be discussed is not one of those specified in RCW 42.30.110 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.110)(1), the governing body cannot discuss that topic in executive session.

In contrast, there is a different type of meeting set forth under RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140) to which "this chapter" (meaning the OPMA) does *not* apply. In other words, these types of meetings – which I refer to as "closed sessions" – are explicitly allowed by statute to occur without complying with OPMA requirements, such as public and media notice. Although there are only four types of closed sessions described under RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140), two of these types are fairly common and should be familiar to many local government elected officials and employees.

For those local governments that have union employees, RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140)(4) provides that the requirements of the OPMA do not apply to collective bargaining sessions with employee organizations. Such sessions in this context include contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement. Additionally, the requirements of the OPMA do not apply to:

> that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

Closed sessions are also allowed under RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140) (2) for:

> That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group.

This provision for closed sessions would apply typically only to *deliberations* by the hearing body regarding quasi-judicial matters because most quasi-judicial hearings are, by statute, *public* hearings. This provision would apply, for example, when a city council is the body that considers appeals of land use determinations made by a city's hearing examiner and the council conducts deliberations regarding whether to uphold or modify the hearing examiner's decision.

Although there is not a definition of "quasi-judicial" that applies in all contexts, guidance is provided, for example, in RCW 42.36.010 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.36.010), which defines quasi-judicial proceedings in the land use context, in relevant part, as those that are conducted by a decision-making body "which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding." I think RCW 42.36.010 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.36.010) is helpful in understanding the concept of quasi-judicial proceedings more broadly.

Another situation in which closed sessions are allowed is in the context of licensing or permitting of business and professional activities. RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140)(1) provides that the requirements of the OPMA do not apply to:

> proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary.

However, local governing bodies are, for the most part, not likely to be involved with such activities.

RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140)(3) describes the remaining type of closed session proceeding for which the requirements of the OPMA do not apply. Under RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140)(3), a closed session can be held for "[m]atters governed by chapter 34.05 (http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05) RCW, the Administrative Procedure Act." But, because the Administrative Procedure Act (APA) applies only to state agencies and does not apply to local governing bodies (see *Riggins v. Housing Auth. of Seattle (http://courts.mrsc.org/mc/courts/supreme/087wn2d/087wn2d0097.htm)*, 87 Wn.2d 97, 100 (1976)), a local governing body would not hold a closed session under this provision.

In summary, there are significant differences between "executive sessions" conducted under RCW 42.30.110 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.110) and what I refer to as "closed sessions" under RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140). The key difference is that the notice and other requirements of the OPMA do not apply to closed sessions conducted pursuant RCW 42.30.140 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140). Understanding this distinction is important not only for local government officials and employees, but also for members of the public in order to avoid confusion, especially

regarding closed sessions.

About Joe Levan

Joe has been a municipal attorney for many years, including as an in-house city attorney, in private practice for two municipal law firms through which he provided litigation and a range of other services to several Washington municipalities, and as part of the in-house legal team for Sound Transit. Joe supervises the legal consultant staff and oversees the work program for the legal team.
VIEW ALL POSTS BY JOE LEVAN (/Home/Stay-Informed/MRSC-Insight.aspx?aid=110)

Comments

0 comments on What's the Difference Between a Closed Session and an Executive Session?

Blog post currently doesn't have any comments.

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CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **M – 2**

Title: Resolution adopting the Selah Transit Development Plan, including the annual report for 2014 and six-year Plan 2015-2020.

Thru: Donald Wayman, City Administrator

From: Andrew Potter, Assistant to the City Administrator

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Staff is recommending the City Council approve the resolution adopting the Selah Transit Development Plan.

Background / Findings & Facts:

The WSDOT requires that we submit, annually, an official report for the previous year and an updated six-year plan. This needs to be passed to continue to be eligible for grant funding.

Recommended Motion:

Move to approve the Resolution adopting the Selah Transit Development Plan, including the annual report for 2014 and six-year Plan 2015-2020.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
1/13/2015	Set a public hearing for the Selah Transit Development Plan
1/27/2015	Public hearing to consider the resolution adopting the Selah Transit Development Plan
1/27/2015	Resolution adopting the Selah Transit Development Plan, including the annual report for 2013 and six-year Plan 2014-2019.
8/11/2015	Set a public hearing for the Selah Transit Development Plan
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.

RESOLUTION NO._____

A RESOLUTION ADOPTING THE SELAH TRANSIT DEVELOPMENT PLAN, INCLUDING THE ANNUAL REPORT FOR 2014 AND SIX-YEAR PLAN 2015-2020.

WHEREAS, the Washington State Department of Transportation requires that cities of the State establish and maintain a Transit Development Plan; and

WHEREAS, Yakima transit must have a yearly updated plan on file in order to apply for Department of Transportation Funds;

WHEREAS, a notice of Public Hearing for August 25, 2015 has been published in accordance with the laws of the State of Washington;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the transit development plan entitled the "Annual Report for 2014 and Six-year Plan 2015 to 2020" attached hereto and incorporated herein by reference be adopted.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 25th day of August, 2015.

_____
Joe Gawlik, Mayor

ATTEST:

_____
Dale Novobielski, Clerk/ Treasurer

APPROVED AS TO FORM:

_____
Robert F. Noe, City Attorney

RESOLUTION NO. _____

City of Selah

Selah Transit Development Plan

Annual Report for 2014

And

Six-year Plan 2015-2020

Reported Annually

Adopted by the Selah City Council: _____ Resolution _____

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Acknowledgements

CITY OF SELAH
Donald Wayman, City Administrator
Andrew Potter, Assistant to City Administrator
Joe Henne, Public Works Director
Dale Novobielski, Treasurer

YAKIMA TRANSIT
Alvie Maxey, Transit Manager
Kevin Futrell, Project Planner
Karen Allen, Program Administrator

INTRODUCTION

The Transit Development Plan 2015-2020 and 2014 Annual Report provides updated information to the Washington State Department of Transportation (WSDOT) on Selah Transit's 2014 transportation components and accomplishments and proposed action strategies for 2015 to 2020.

This document is submitted per the requirements of RCW § 35.58.2795. Selah is required to prepare a six-year transit development plan and annual report every year. WSDOT uses this document to prepare an annual report for the Washington State Legislature summarizing the status of public transportation systems statewide. This document is also used to notify the public about projects that have been completed, are in process, or are planned for the future. Following a public hearing, the Selah City Council must approve this document prior to this document going into effect.

History

Selah was officially incorporated on April 3, 1919. Selah has a strong mayor form of government. Selah's base economic activity primarily consists of fruit warehousing/processing facilities, due to the proximity of fruit orchards in the nearby Wenas Valley and access to regional railroad and roadway systems for shipment to markets. Selah is one of the many communities that serve as a "bedroom community" to the city of Yakima to the south.

In 2009, the city of Selah began operating fixed-route bus & paratransit services under a contract with the city of Yakima (Yakima Transit) and continues to purchase those services. Selah's Transit services are funded by a voter-approved 0.3% sales tax (2007). Service initially started out with a north-south route through Selah and a trip along the Speyers-Fremont Loop.

In 2010, bus service was expanded to include a second trip along the Speyers-Fremont Loop during the route and frequency increased to hourly service.

In 2014, service was expanded to the Selah Firing Center Park & Ride providing a long-desired connection for military personnel working at the Firing Center and a Yakima-Ellensburg Commuter connection. Frequency reverted back to hourly service with half-hour service during the AM/PM peak hours and only one trip along the Speyers-Fremont Loop during the route.

On June 29, 2015, the city of Selah began participating in funding the Yakima-Ellensburg Commuter with a stop at the Selah Civic Center.

SECTION I: ORGANIZATION

Organizational Structure

The city of Selah does not have any transit-specific employees dedicated to Selah's Transit operations. Selah's transit-related staff consists of administrative personnel that support the City as a whole, including positions from City Hall and Public Works.

Physical Plant

Selah Transit does not have a facility dedicated to only Transit services. Selah Transit is operated incidental to other activities out of Selah City Hall and the Selah Public Works Facility.

SECTION II: TRANSPORTATION SERVICES

Fixed-Route Service

The City of Selah's fixed-route bus service is operated Mon-Fri from 6am-7pm, Saturday from 7am-6pm, and Sundays 8am-4pm. Transit services are not available on nationally-recognized holidays (New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, & Christmas Day).

Selah is served by Yakima Transit's Route 10, which serves both Selah and Yakima. Ridership for Route 10 in 2014 was 100,099 passengers, a decrease of 7.98% (2013 - 108,088). The decrease was relatively low; Yakima Transit's system-wide decrease was 12.26% during the same period. Ridership varies from year to year and is affected by service changes including modifying routes, expanding/contracting service, changes to transfer policies, & increases in fares. Ridership was down across all passenger types. The majority of the decrease is attributed to the reductions in service, as well as the March 2013 fare increase.

Several changes have been made to the route since the inception of the program, which have included a second trip per hour along the Speyers-Freemont Loop, changes along N. Wenas Road and Jim Clements Way, modifications to frequency (from hourly service to half-hour service to hourly-plus-peak service (AM/PM)). The service currently extends a commuter service-type extension out to the Firing Center Park & Ride Lot serving Zirkle Fruit along the way. Modifications will continue to happen as streets change and passenger transportation needs continue to evolve with the city of Selah's approval.

Yakima Transit retains all fares from the fixed-route service as part of the service agreement with Yakima Transit. As part of the consideration of keeping the fare revenue, Selah participates in Yakima Transit's operating grants.

	One-way fare	Monthly Passes
Adults *(age 18 and over)*	$1.00	$25.00
Youths *(age 6 - 17)*	75¢	$18.00
Reduced Fare *(Persons 62/over, people with disabilities and Medicare Card holders. Reduced Fare ID card with photo required for reduced fare.)*	50¢	$9.00
Yakima-Ellensurg Commuter	$5.00	$150.00
Pre-School *(under 6, accompanied by adult)*	FREE	
Transfers (See Transfer policy, page 4)	FREE	

Paratransit

Yakima Transit continued to provide paratransit (Dial-A-Ride) services for Selah in 2014 through an agreement with Medstar. Paratransit services are provided only when fixed-route is available, door-to-door, to individuals who cannot access fixed-route bus service. Selah's paratransit services the areas within the city limits of Yakima and Selah and some trips into the city of Union Gap (many for dialysis). Paratransit ridership decreased 12.54% from 3,818 passengers in 2013 to 3,340 passengers in 2014. The large reduction can be partially attributed to cost avoidance passengers, as well as, care facilities increasing their utilization of other forms of transportation. Paratransit services typically cost $24-$30 per passenger trip. Paratransit services are required within Selah's service area under FTA regulations because fixed-route bus service is provided.

SECTION III: STATE & LOCAL LONG-RANGE PUBLIC TRANSPORTATION & CAPITAL IMPROVEMENT PRIORITIES

Local Priorities

This plan establishes local priorities for Selah's Transit Services, which include:

1. Connecting Selah's Transit System with Neighboring Transit Systems

Connections can be made from Prosser to Ellensburg by utilizing the Yakima-Ellensburg Commuter, People For People's Community Connector, & Yakima Transit's fixed-route system. Selah started participating in the Yakima-Ellensburg Commuter on June 29, 2015, by both participating in funding the service as well as providing a parking location for commuters.

2. Providing Efficient and Effective Transit Services throughout Selah

Selah's constantly looking at ways to provide more effective and efficient service to passengers through route modifications and passenger facilities (park & ride locations & passenger shelters).

Capital Improvements

For 2014, just outside of Selah, Yakima Transit obtained grant funding for the expansion of the Firing Center Park & Ride lot along Interstate 82 at the Firing Center Road Exit 26, which serves the region, and more immediately Selah commuters. The project was completed on August 19, 2014, expanding the Park & Ride lot from 44 to 105 parking stalls.

As part of Selah's effort to provide commuting options, they purchased property behind the City's Civic Center that is intended to be developed into a multi-use park & ride lot serving not only fixed-route bus service, but also, the Yakima-Ellensburg Commuter. Additional passenger shelters and sidewalk improvements for ADA passengers have been considered.

SECTION IV: PROGRAM FUNDING & EXPENSES

Operating Revenue

Selah utilizes sales tax revenue & grant funding to maintain transit services. Selah Transit's operating revenue was $423,840 for 2014. Funding in subsequent years should revert back to something close to 2013 funding levels. The increase in sales tax revenue is the result of an increase in government capital projects.

The city of Selah purchases fixed-route bus and Dial-A-Ride services from the city of Yakima. These services allow Yakima residents to come to Selah to purchase goods and services, as well as work for local employers or access life-necessity services like dental, medical, & social services, and vice versa. Currently, Selah's service consists of a portion of Yakima Transit's Route 10, which travels from the Yakima Downtown Transit Center along N. 1st Street to and throughout the city of Selah. Selah pays for the time that the bus travels within the city of Selah on an hourly rate.

Selah benefits from Yakima Transit's operating grants as they relate to their service including utilizing a portion of Yakima Transit's annual allocation from the Federal Transit Administration. Service reductions

and expansions are at Selah's discretion. Selah's most recent change was to extend services to the Firing Center (7 round trips per weekday) to provide additional support for the Yakima-Ellensburg Commuter and provide service to workers at the Zirkle fruit warehouse and processing facility.

Sales Taxes

The city of Selah has a voter-approved 0.3% sales tax that pays for operating service in Selah, mainly fixed-route and paratransit services contracted for through Yakima Transit. Each 0.1% of sales tax equals approximately $100K in revenue.

Grant Funds

The city of Selah participates in Yakima Transit grants relating to Selah's service. In 2014, these grants included the Federal 5307 annual apportionment grant and a Federal CMAQ Sunday Service grant (through June 30, 2014).

Washington State Transit Formula Funds

The Washington State Department of Transportation provides allocations to the city of Selah for general operating expenses and paratransit services. For 2013-2015, the amount was $6,718 for paratransit and $4,800 for general transit services. The 2015-2017 paratransit allocation is $7,037.

Operating Expenditures

Selah's operating expenses were $282,914. There was no increase in rates in 2015. Selah's rates remained flat in 2015 and are anticipated to increase slightly in 2016. Paratransit services remained relatively close to actual costs for 2014 and are based on a cost-per-trip basis as negotiated by the city of Yakima with Medstar the Dial-A-Ride contractor. The rates the paratransit contractor charges typically increase each year due to a built in cost of living increase. Selah's operating expenses are anticipated to slightly increase through 2020.

Capital Funds

Selah's typical capital expenses are for bus shelters and sidewalks. In 2014, $307,000 of Transit funds was spent on Capital, expenses the majority of which was spent in the acquisition and preparation of parking next to the Civic Center. Other typical expenses include bus shelter and utility shop facility improvements. Selah plans on continuing to improve accessibility to transit stops and provide shelter from the elements for their passengers. For 2015, Selah planned $130,000 budgeted for Transit funded capital expenses (Park & Ride $125,000 and ADA accessible sidewalks $5,000, and passenger shelters). Capital expenses are anticipated to be minimal (less than $50,000) through 2020.

SECTION V: SIGNIFICANT CHANGES PLANNED, 2015 – 2020

Selah Transit does not have any significant operating changes or capital improvements planned for the 2015-2020 period.

APPENDIX A – Transit Financials

Selah Transit - 2014 Annual Report & Budget 2015-2020							
	2014	2015	2016	2017	2018	2019	2020
Beginning Balance	$ 416,354	$285,073	$ 188,872	$ 170,882	$175,022	$157,192	$145,362
Operating Revenues							
Sales Tax	$ 405,070	$ 285,000	$ 280,000	$ 280,000	$ 280,000	$ 280,000	$ 280,000
Federal Operating Grants	$ -	$ -	$ -	$ -	$ -	$ -	$ -
WSDOT Grants	$ 6,718	$ 6,000	$ -	$ 6,000	$ -	$ 6,000	$ 6,000
WSDOT Formula Funds	$ 9,613	$ 11,729	$ 4,800	$ 4,900	$ 4,900	$ 4,900	$ 4,900
Other	$ 2,439	$ 2,070	$ 1,210	$ 1,240	$ 1,270	$ 1,270	$ 1,270
Total Operating Revenue	**$ 423,840**	**$ 304,799**	**$ 286,010**	**$ 292,140**	**$ 286,170**	**$ 292,170**	**$ 292,170**
Operating Expenses							
Fixed-Route P&M	$ 236,908	$ 245,000	$ 240,000	$ 240,000	$ 240,000	$ 240,000	$ 240,000
Yakima-Ellensburg Commuter	$ -	$ 6,000	$ 16,000	$ 16,000	$ 16,000	$ 16,000	$ 16,000
Paratransit ADA P&M	$ 46,006	$ 55,000	$ 62,000	$ 62,000	$ 62,000	$ 62,000	$ 62,000
Total Operating Expenses	**$ 282,914**	**$ 306,000**	**$ 318,000**	**$ 318,000**	**$ 318,000**	**$ 318,000**	**$ 318,000**
Net Cash Available	**$557,280**	**$283,872**	**$156,882**	**$145,022**	**$143,192**	**$131,362**	**$119,532**
Capital Revenue							
Sales Tax Revenue	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000
WSDOT Grant - Capital	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Other	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Capital Revenue	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000
Capital Expenditures							
Minor Equipment	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Facilities	$ 307,207	$ 130,000	$ -	$ -	$ -	$ -	$ -
Shelters/benches/signs	$ -	$ -	$ 11,000	$ -	$ 11,000	$ 11,000	$ 11,000
Sidewalks	$ 5,000	$ 5,000	$ 15,000	$ 10,000	$ 15,000	$ 15,000	$ 15,000
Total Capital Expenses	$ 312,207	$ 135,000	$ 26,000	$ 10,000	$ 26,000	$ 26,000	$ 26,000
Ending Cash Balance 12/31	$ 285,073	$ 188,872	$ 170,882	$ 175,022	$ 157,192	$ 145,362	$ 133,532

APPENDIX B: Six-Year Transit Improvement Plan - Project List

There are no major capital or operating projects planned over the next six years that will utilize transit funds or public transportation grant funds.

APPENDIX C: PUBLIC HEARING NOTICE

Wednesday August 12, 2015

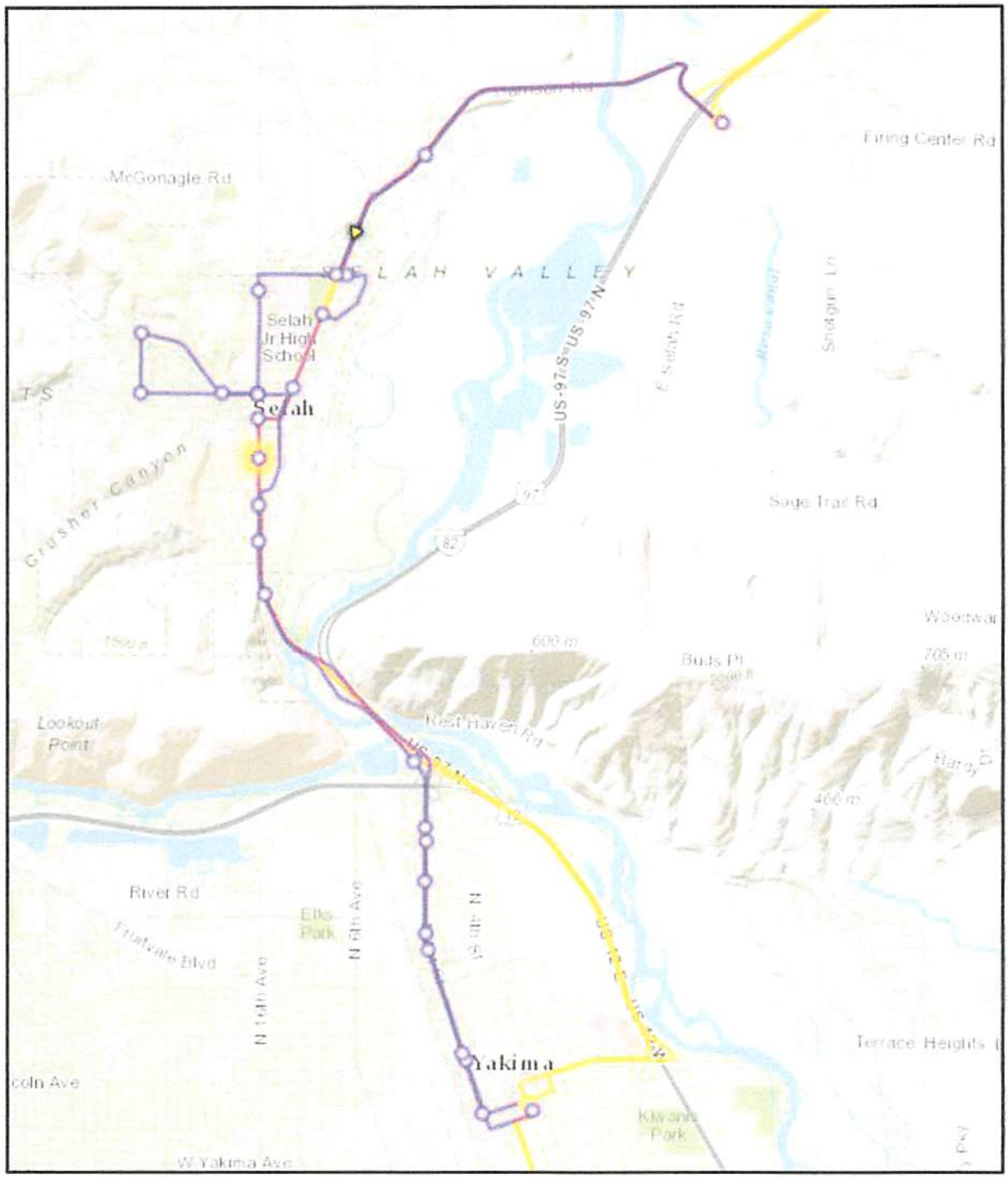
Selah Transit is submitting to the Washington State Department of Transportation its Six-Year Transit Development Plan and Annual Report.

These documents address state and local long and short-range priorities, capital improvements, planned significant operating changes, program funding sources, and the summary of Selah Transit's 2014 operations and proposed changes over the next six years. The proposed program will be the final program, unless amended, and satisfies the requirements regarding the final Program Of Projects.

A public hearing on the submittal will be held by the Selah City Council on August 25th, 2015

A draft document is available for public review during normal office hours at the Selah City Hall located at 115 W. Naches Avenue, Selah, WA 98942 or online at www.selahwa.gov

Appendix D:Fixed-Route Map



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **M – 3**

Title: A Resolution Authorizing the Mayor to sign Amendment #1 to the Professional Service Agreement with the Yakima Valley Conference of Governments (YVCOG) For Professional Services to update the City Growth Management Act (GMA) Comprehensive Plan.

Thru: Donald Wayman, City Administrator

From: Joe Henne, Public Works Director

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: $2,880.00

Funding Source: Professional Services Planning: 001-000-058-558-51-41

Staff Recommendation:

Approve mayor to sign the Amendment #1 to the professional services agreement with YVCOG.

Background / Findings & Facts:

The City entered into a professional services agreement with YVCOG to provide services to include review and updates to the GMA plan. The contract needs to be increased by an additional $2,880.00 bringing the total amount of the contract to $18,670.00. The increase is to allow for GIS mapping hours for the land use and housing elements that was not in the original contract's scope of work or budget.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Recommended Motion:

Authorize mayor to sign an Amendment #1 to the Professional Service Agreement with YVCOG.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
5/15/2015	Resolution Authorizing the Mayor to Sign a Professional Services Contract with Yakima Valley Conference of Governments for Technical Assistance.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AMENDMENT #1 TO THE PROFESSIONAL SERVICE AGREEMENT WITH THE YAKIMA VALLEY CONFERENCE OF GOVERNMENTS FOR GMA UPADTE SERVICES

WHEREAS, The City of Selah referred to as the "City" and the Yakima Valley Conference of Governments, referred to as the "Conference", has entered into a contract to formalize their relationship; and

WHEREAS, the City belives it to be beneficial to utilize the Conference to provide planning services to update the Citys Growth Management Act Comprehensive Plan: and

WHEREAS, the City now wishes to amend the contract and increase the reimbursement an additonal amount of $2,880.00 in accordance with the Budget and Scope of Work described in the Technical Assistance Contract Amendment #1 to the Conference's Professional Services Agreement; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor is authorized to sign Amendment #1 of the Professional Service Agreement with the Yakima Valley Conference of Governments for GMA Update Services.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 25th day of August 2015.

_____
John Gawlik, Mayor

ATTEST:

_____
Dale E. Novobielski, Clerk Treasurer

_____
Robert Noe, City Attorney

RESOLUTION NO. _____

CITY OF SELAH
TECHNICAL ASSISTANCE CONTRACT
AMENDMENT #1

THIS AMENDMENT, entered into this ____ day of _____, 20__ by and between the Yakima Valley Conference of Governments, a regional association having its territorial limits within Yakima County, State of Washington (hereinafter called the "Conference"), acting herein by James A. Restucci, Conference Chair, hereunto duly authorized, and the City of Selah, a municipal corporation located within Yakima County, State of Washington (hereinafter called the "City"), acting herein by Mayor John Gawlik, hereunto duly authorized;

WITNESSETH THAT;

WHEREAS, on May 20, 2015 the City contracted with the Conference for certain technical planning assistance; and,

WHEREAS, it is necessary to amend certain sections of the contract;

NOW, THEREFORE, the parties do mutually agree, to modify the contract to provide the following:

Compensation and Method of Payment:

The amount of the original contract will be increased by an additional $2,880, bringing the total amount of the original contract to $18,670.

Scope of Work and Estimate for Services:

Land Use Element – Estimated Hours, GIS Mgr is changed to 20; Subtotal Hours and Cost is changed to $3,519.

Housing Element – Estimated Hours, GIS Mgr is changed to 20; Subtotal Hours and Cost is changed to $3,141.

All other provisions of said contract remain unchanged.

YAKIMA VALLEY CONFERENCE OF GOVERNMENTS	CITY OF SELAH YAKIMA COUNTY
_____	_____
James A. Restucci, Conference Chair	Mayor John Gawlik
ATTEST: _____ Secretary	ATTEST: _____
Date: _____	Date: _____

City of Selah, WA
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT made and entered into by and between the City of Selah, WA, hereinafter referred to as the "City", and the Yakima Valley Conference of Governments, hereinafter referred to as the "CONFERENCE",

WITNESSETH THAT:

WHEREAS, the City and the Conference are desirous of entering into a contract to formalize their relationship; and

WHEREAS, it would be beneficial to the City to utilize the Conference as an independent entity to accomplish the Scope of Work as set forth herein and such endeavor would tend to best accomplish the objectives of its local planning program.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and provisions contained herein, and the mutual benefits to be derived there from, the parties hereto agree as follows:

1. Services to be Provided by the Parties:

   a. The Conference shall complete in a satisfactory and proper manner as determined by the City the work activities described in the Scope of Work (Attachment #1 to the contract).

   b. The City will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in Section 3 below.

2. Time of Performance:

   The effective date of this contract shall be the date the parties sign and complete execution of the contract. The termination date of the contract shall be December 31, 2016.

3. Consideration:

   The City shall reimburse the Conference in accordance with the Budget described in Attachment #1 of the contract for all allowable expenses agreed upon by the parties to complete the Scope of Work. In no event shall the total amount to be reimbursed by the City exceed the sum of $15,790. Reimbursement under this contract shall be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of the agreement.

4. Records:

The Conference agrees to maintain such records and follow such procedures as may be required as the City may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Conference for a period of three years after final audit of the City's project, unless a longer period is required to resolve audit findings or litigation. In such cases, the City shall request a longer period of record retention.

The City and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records, and books of the Conference involving transactions related to this local program and contract.

5. Relationship:

The relationship of the Conference to the City shall be that of an independent consultant rendering professional services. The Conference shall have no authority to execute contracts or to make commitments on behalf of the City and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the City and the Conference.

6. Suspension, Termination, and Close Out:

If the Conference fails to comply with the terms and conditions of this contract, the City may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this contract in the manner specified herein:

a. Suspension - If the Conference fails to comply with the terms and conditions of this contract, or whenever the Conference is unable to substantiate full compliance with provisions of this contract, the City may suspend the contract pending corrective actions or investigation, effective not less than seven (7) days following written notification to the Conference or its authorized representative. The suspension will remain in full force and effect until the Conference has taken corrective action to the satisfaction of the City and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the Conference or its authorized representative during the period of suspension will be allowable under the contract except:

(1) Reasonable, proper, and otherwise allowable costs which the Conference could not avoid during the period of suspension;

(2) If upon investigation, the Conference is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed; and

(3) In the event all or any portion of the work prepared or partially prepared by the Conference be suspended, abandoned, or otherwise terminated, the City shall pay the Conference for work performed to the satisfaction of the City, in accordance with the percentage of the work completed.

b. Termination for Cause - If the Conference fails to comply with the terms and conditions of this contract and any of the following conditions exist:

(1) The lack of compliance with the provisions of this contract is of such scope and nature that the City deems continuation of the contract to be substantially detrimental to the interests of the City;

(2) The Conference has failed to take satisfactory action as directed by the City or its authorized representative within the time period specified by same;

(3) The Conference has failed within the time specified by the City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then,

The City may terminate this contract in whole or in part, and thereupon shall notify the Conference of the termination, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the Conference. After this effective date, no charges incurred under any terminated portions of the Scope of Work are allowable.

c. Termination for Other Grounds - This contract may also be terminated in whole or in part:

(1) By the City, with the consent of the Conference, or by the Conference with the consent of the City, in which case the two parties shall devise by mutual agreement, the conditions of termination, including effective date and in case of termination in part, that portion to be terminated;

(2) If the funds allocated by the City via this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services;

(3) In the event the City fails to pay the Conference promptly or within sixty (60) days after invoices are rendered, the City agrees that the Conference shall have the right to consider said default a breach of this agreement and the duties of the Conference under this agreement terminated. In such event, the City shall then promptly pay the Conference for all services performed and all allowable expenses incurred; and

(4) The City may terminate this contract at any time giving at least ten (10) days notice in writing to the Conference. If the contract is terminated for convenience of the City as provided herein, the Conference will be paid

for time provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications:

The City may require changes or modifications in the Scope of Work to be performed hereunder. Such changes, including any decrease or increase in the amount of compensation therefore, which are mutually agreed upon by the City and the Conference shall be incorporated in written amendments to this contract.

8. Personnel:

The Conference represents that they have, or will secure at their own expense, all personnel required in order to perform under this contract. Such personnel shall not be employees of, or have a contractual relationship to the City.

All services required hereunder will be performed by the Conference or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the City. Any work or services subcontracted hereunder shall be specified in written contract or agreement and shall be subject to each provision of this contract.

9. Assignability:

The Conference shall not assign any interest on this contract, and shall not transfer any interest on this contract (whether by assignment or novation), without prior written consent of the City thereto: provided, however, that claims for money by the Conference from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City by the Conference.

10. Reports and Information:

The Conference shall furnish the City such periodic reports as the City may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

11. Findings Confidential:

All of the reports, information, data, etc., prepared or assembled by the Conference under this contract are confidential and the Conference agrees that they shall not be made available to any individual or organization without prior written approval of the City unless otherwise subject to public records laws.

12. Copyright:

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Conference.

13. Compliance with Local Laws:

The Conference shall comply with all applicable laws, ordinances, and codes of the state and local government and the Conference shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Title VI of the Civil Rights Act of 1964:

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

15. Section 109 of the Housing and Community Development Act of 1974:

No person in the United States shall on the grounds of race, color, creed, religion, sex, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

16. Interest of Members of the City:

No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the project, shall have any personal financial interest, direct, or indirect, in this contract; and the Conference shall also take appropriate steps to assure compliance.

17. Interest of Other Public Officials:

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the project, shall have any personal financial interest, direct or indirect, in this contract; and the Conference shall take appropriate steps to assure compliance.

18. Interest of Consultant and Employees:

The Conference covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Conference further covenants that in the performance of this contract, no person having such interest shall be employed.

19. Audits and Inspections:

The City and State Auditor or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and part of the project and this contract, by whatever legal and reasonable means are deemed expedient by the City and the State Auditor.

20. Hold Harmless:

The Conference agrees to indemnify and hold harmless the City, appointed and elective officers and employees, from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the Conference's and its agents' negligent performance of work associated with this agreement. The Conference shall not be liable for property and bodily injury that may result from the negligence of any construction contractor or construction subcontractor.

This agreement contains all terms and conditions agreed to by the City and the Conference. The Attachments to this agreement are identified as follows:

Attachment #1, Scope of Work, consisting of 1 page.

IN WITNESS WHEREOF, the City and the Conference have executed this contract agreement as of the date and year last written below.

CITY OF SELAH
WASHINGTON

by _____
John Gawlik, Mayor

ATTEST:

by _____
City Clerk

Date: May 12, 2015

APPROVED AS TO LEGAL FORM:

by _____
Attorney for the City of Selah

YAKIMA VALLEY CONFERENCE OF GOVERNMENTS

by _____
YVCOG Chair

ATTEST:

by _____
Secretary

Date: 5/20/2015

Attachment #1

City of Selah GMA Periodic Update - YVCOG Scope of Work and Estimate for Services

	Tasks	Estimated Hours		
		Sr. Planner	GIS Mgr	Est. Cost
Comprehensive Plan Update				
Administration Element/Summary	1. Review and update existing element as needed to reflect current conditions and GMA changes. Includes consultation with city staff regarding direction on content. Provide draft to city staff for review.	4		$252
	2. Draft public participation plan.	3		
	3. Revise as needed to reflect staff/Planning Commission comments.	1		$63
	Subtotal Hours and Cost	*8*		*$315*
Utilities Element	1. Review and update existing info in capital facilities element as needed to reflect recent data, current conditions, and GMA changes. Draft utilities as stand-alone element. Includes consultation with city staff regarding direction on content and goals/policies.	4		$252
	2. Revise as needed to reflect staff/Planning Commission comments.	1		$63
	Subtotal Hours and Cost	*5*		*$315*
Transportation Element *	1. Complete city traffic count, with input on counter locations from city staff.	25		$1,575
	2. Review and update existing element as needed to reflect recent data, current conditions, and GMA changes. Includes consultation with city staff regarding direction on content, goals/policies, and transportation priorities. Provide draft to city staff for review	25	10	$2,295
	3. Revise as needed to reflect staff/Planning Commission comments.	6		$378
	Subtotal Hours and Cost	*56*		*$4,248*
Land Use Element	1. Review and update existing element as needed to reflect recent data, current conditions, and GMA changes. Includes consultation with city staff regarding direction on content, goals/policies, and Future Land Use Map. Provide draft to city staff for review.	25		$1,575
	2. Revise as needed to reflect staff/Planning Commission comments.	8		$504
	Subtotal Hours and Cost	*33*	*0*	*$2,079*

Attachment #1

	Tasks	Estimated Hours		
Housing Element	1. Review and update existing element as needed to reflect recent data, current conditions, and GMA changes. Includes meeting(s) with city staff regarding direction on content and goals/policies.	20		$1,260
	2. Provide draft to city staff for review, and revise as needed.	5		$315
	3. Revise as needed to reflect staff/Planning Commission comments.	2		$126
	Subtotal Hours and Cost	*27*	*0*	*$1,701*
Natural Environment Element	1. Review and update existing element as needed to reflect recent data, current conditions, and GMA changes. Includes consultation with city staff regarding direction on content and goals/policies. Provide draft to city staff for review.	15	15	$2,025
	2. Revise as needed to reflect staff/Planning Commission comments.	3		$189
	Subtotal Hours and Cost	*18*	*15*	*$2,214*
Capital Facilities Element *	1. Review and update existing element as needed to reflect recent data, current conditions, and GMA changes. Includes consultation with city staff regarding direction on content and goals/policies. Provide draft to city staff for review.	15	5	$1,305
	2. Revise as needed to reflect staff/Planning Commission comments.	6		$378
	Subtotal Hours and Cost	*21*		*$1,683*
Development Regulations Update				
	1. Review and update development regulations as needed to comply with GMA requirements and ensure consistency with Comprehensive Plan updates. Provide draft to city staff for review.	15		$945
	2. Revise as needed to reflect staff/Planning Commission comments.	6		$378
	3. Rezone(s) as needed for consistency.	10		$630
	Subtotal Hours and Cost	*31*	*0*	*$1,953*
Critical Areas Ordinance Update				
	1. Review and update existing ordinance and critical area maps as needed to reflect recent Best Available Science and other data, current conditions, and GMA changes. Provide draft to city staff for review.	10		$630

Attachment #1

Tasks	Estimated Hours		
2. Revise as needed to reflect staff/Planning Commission/SEPA comments.	8		$504
Subtotal Hours and Cost	*18*	*0*	*$1,134*
Planning Commission/Outreach			
Comprehensive Plan kickoff open house - prepare maps and materials; staff	8	8	$1,080
Present Admin and Utilities Elements - PC. Includes staff report, discussion preparation, and travel.	4		$252
Present Natural Environment Element - PC. Includes staff report, discussion preparation, and travel.	4		$252
Present Housing and Land Use Elements - PC. Includes staff report, discussion preparation, and travel.	4		$252
Present Transportation and Capital Facilities Elements - PC. Includes staff report, discussion preparation, and travel.	4		$252
Present Development Regulations and CAO - PC. Includes staff report, discussion preparation, and travel.	5		$315
Subtotal Hours and Cost	*12*	*0*	*$2,403*
Combined Process - Comp Plan, CAO, Development Regulations			
Complete SEPA checklist; respond to comments; issue threshold decision.	6		$354
Submit drafts to Department of Commerce for 60-day review	1		$59
Revise drafts based on SEPA/Commerce comments	5		$295
Draft adoption ordinances	5		$295
Finalize drafts for Council consideration	5		$295
Staff City Council meeting(s)/public hearing	4		$236
Submit adopted ordinances to Commerce	1		$59
Contract/billing admin @ $120/month for 18 months			$2,160
Mileage			$75
Copies and mailing			$100
* To complete at no charge to city using MPO/RTPO funds.		**CREDIT**	**$6,183**
		TOTAL	**$15,790**

NOTES:

1. City's GMA Periodic Update (Comprehensive Plan, development regulations, and Critical Areas Ordinance updates) is due June 30, 2017 (RCW 36.70A.130(4)(c)).

2. Time estimates assume interaction with city staff to gather data, provide local knowledge, and review draft materials. Timely completion of tasks is dependent upon timely provision of requested information and review of materials by city staff.

3. Timelines for completion of these tasks will be dependent upon availability of city staff for responses and Planning Commission/City Council schedules.

4. Hours to staff meetings include meeting preparation and travel to/from city.

5. Cost estimates per task include benefits and indirect costs.

6. Where the estimated cost for any given task is not completely used or necessary, those funds may be used for another task.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **M – 4**

Title: Resolution Approving the Preliminary Plat of "Whispering Views Estates" (912.45.14-02) and Adopting Findings and Conditions of Preliminary Plat Approval

Thru: Donald Wayman, City Administrator

From: Thomas R Durant, Community Planner

Action Requested: Approval

Board/Commission Recommendation: Denial

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Approval.

Background / Findings & Facts:

Hearing Examiner conducted open record public hearing July 31, 2015. Prepared Findings and Conclusions recommending Denial Without Prejudice of Whispering Views Estates Planned Development with allowance for reopening the open record proceeding to allow the Applicant in its discretion to reasonably resolve incompatibility with neighboring land owners from the proposed structures on Lots 40 through 47.

The Hearing Examiner also recommended that if the City Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC

the approval should be conditioned as set out in the staff report and supplemented as appropriate based on hearing testimony.

Recommended Motion:

I move the Council reject the Hearing Examiner's recommendation to deny Whispering Views Estates Planned Development, approve the Whispering Views Estates Preliminary Plat and adopt the Hearing Examiner's Findings and Conclusions to the extent that they support the approval.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
7/31/2015	Hearing Examiner Open Record Public Hearing
Click here to enter a date.	Click here to enter text.
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Click here to enter a date.	Click here to enter text.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PRELIMINARY PLAT OF "WHISPERING VIEWS ESTATES" (912.45.14-02) AND ADOPTING FINDINGS AND CONDITIONS OF PRELIMINARY PLAT APPROVAL

WHEREAS, on August 25, 2015 the City of Selah City Council considered Preliminary Plat No. 912.45.14-02 known as "WHISPERING VIEWS ESTATES" located at 207 E. Goodlander Road. Yakima County Taxation Parcel Numbers: 181425-33419 through 33426; and,

WHEREAS, the Preliminary Plat was combined with an application for rezone of the subject property from Two Family Residential (R-2) to Planned Development (PD) and is dependent on approval of that application; and,

WHEREAS, The Hearing Examiner recommended denial of the Planned Development without prejudice with allowance for reopening the open record proceeding commenced in accordance with SMC 10.24.060 to allow for consideration of and comment on additional information and amended development plan or program material submitted by the Applicant in its discretion to reasonably resolve incompatibility with neighboring land owner from the proposed structure on Lots 40 through 47; and,

WHEREAS, The Hearing Examiner also recommended that if the City Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC notwithstanding a recommendation for denial without prejudice, the approval should be appropriately conditioned on the requirements set out in the staff report and supplemented as appropriate based on hearing testimony; and,

WHEREAS, the City of Selah Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC and has adopted the Hearing Examiner's recommendation that the Preliminary Plat be conditioned as recommended by the Examiner; and,

WHEREAS, the City of Selah Council has considered the Hearing Examiner's findings of fact and conclusions and the City staff report dated July 24, 2015 and the Council is satisfied that the matter has been sufficiently considered; and,

WHEREAS, the City Council adopts the Findings and Conclusions of the Hearing Examiner's Recommendation dated August 16, 2015 to the extent that they support approval.

WHEREAS, the City Council considered the elements of public use and interest to be served by such platting, and

WHEREAS, the City Council considered the elements of public health, safety, and general welfare pertaining to the preliminary plat;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that Preliminary Plat No. 912.45.14-02 designated as "Whispering Views Estates" be approved, that the Hearing Examiner's Findings and Conclusions supporting approval of the proposal be adopted with the twenty three (23) specific conditions contained in said Findings and Conclusions (with Condition 19 revised as presented at the open record public hearing, Exhibit HE1) and a copy of which is attached hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 25th day of August, 2015.

_____
John Gawlik, Mayor

ATTEST:

_____
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

_____
Robert Noe, City Attorney

CONDITIONS OF PRELIMINARY PLAT APPROVAL

1. Final lot dimensions and lot area shall substantially conform to the preliminary plat.

2. Storm water drainage facilities for the project site must comply with a drainage facilities plan prepared by a licensed professional engineer and approved by the Public Works Director. The plan must demonstrate that the project as proposed can provide for the retention of runoff from developed parts of the project on-site.

3. Grading permits are required for site work. Prior to any site disturbance, a grading plan or plans, prepared by a licensed professional engineer shall be submitted and approved by the Public Works Director. This requirement also applies to the development of individual lots of the subdivision, although it is not intended to require homesite permitting or development as a condition of recording the final plat.

4. Finished slopes shall be at most 2:1 (horizontal to vertical) or have retaining walls designed by a licensed professional engineer, unless the engineering requirement is waived by the building official in accordance with the International Building Code. This condition shall be met prior to recording the final plat.

5. Planned development shall be in substantial conformance to the project design as described in the project narrative, application materials and on the face of the proposed preliminary plat entered into the record at the time of hearing. Setbacks, building height and lot coverage shall conform to the building configurations, plans and elevations included in the final plan and program and shown on the currently proposed preliminary plat. Standards not otherwise provided for in these documents shall be to the standards required in the R-2 district by the zoning ordinance. The CCRs shall be amended prior to recordation to provide for timely snow removal and disposal to assure protection of traffic and pedestrian safety.

6. All design and/or improvement notations indicated on the preliminary plat are included herein as conditions of preliminary plat approval. (Including, but not limited to, dedicated right-of-way or easement widths and locations, lot size and configuration).

7. All final plans and specifications for public improvements must be prepared by a Licensed Professional Engineer and reviewed and approved by the Public Works Director prior to construction. Specifications for improvements shown on the preliminary plat are minimum specifications that may be superseded by conditions contained herein or by specific conditions as approved by the Public Works Director. Upon completion of construction and prior to final plan approval, final 'as-built' construction plans and a written certification by a Licensed Professional Engineer that said improvements were completed in accordance with the approved construction plans must be submitted to the Public Works Director for approval.

8. The private interior streets shall be constructed, at minimum, to the fire apparatus road standards of the International Fire Code to the following specifications:

a. 20 foot wide (minimum) asphalt surfacing
b. Not to exceed 10 percent slope except as otherwise allowed by the Fire Chief.
c. 26 foot wide access easements for the north-south private roads along the east and west property lines as depicted by the preliminary plat.
d. More than one access point to the public street system.

9. The following signs and shall be provided on the private roads maintained through the homeowners association established in accordance with the CCRs:
   a. No parking signs
   b. Fire lane signs as specified in the IFC D103.6. They shall be posted on both sides of the road.
   c. Warning signs and "Share the Road" plaques as recommended by the traffic study.

10. Eight overflow parking spaces meeting the dimension and surfacing standards of SMC 10.34 shall be provided as depicted on the preliminary plat. Landscaping standards, if applicable are considered to be met by the open space areas.

11. The applicant shall pay an amount to the City sufficient to pay for the installation of a sidewalk on the entire E. Goodlander Road frontage of the subject property. The amount of payment required shall represent the applicant's proportionate share of the cost of its installation based on lineal footage and on the City's engineering estimate for the costs of installation. In the event that the actual costs to install the sidewalk exceed the engineer's estimate, the applicant shall pay an amount in addition to the amount already paid so that the sum of both payments does not exceed a total of 115% of the engineer's estimate. This payment is required as a SEPA mitigation measure and shall be made prior to recording the final plat. If this payment was already made as a requirement for the short plats recorded on this property in 2014 this condition shall be considered satisfied except to the extent that the actual costs exceed the engineer's estimate as provided for in this condition.

12. A NPDES construction stormwater general permit shall be obtained unless determined by the Department of Ecology that it is not required.

13. A dust control plan shall be prepared and implemented during construction as required by the Yakima Regional Clean Air Agency.

14. Documentation of the ownership and providing for perpetual maintenance of the two common open space tracts in grass for casual recreational purposes shall be provided prior to recording the final plat for approval by the City of Selah. Documentation may include covenants, establishment of a homeowner's association or deed restrictions and they shall be recorded prior to recording the final plat. Any such documentation shall be a mechanism for assuring adequate funding for reasonable care of landscaping.

15. Fire hydrant(s) shall be provided and installed by the developer at locations approved by the City of Selah Fire Chief and to the specifications of Selah Municipal Code, Chapter 11.30 except that the diameters of water lines connected to hydrants shall be as approved by the Public Works Director.

16. All lots must be served with a full range of public and private services and utilities including public water and sewer, power, natural gas and telephone. All utilities except for the standard telephone box, transmission box and similar structures shall be underground. Private sewer lines shall be installed, require permits and inspection under the International Residential Code.

17. Subdivision design shall include the provision of public water lines designed by a licensed professional engineer. Individual service lines shall be limited to one line per dwelling unit. The water line or lines shall be installed in the access and utility easement with a minimum of 10 feet of separation from a sanitary sewer line, unless approved otherwise by the Public Works Director.

18. There shall be a moratorium on public street cuts for a period of five (5) years from the date of plat recording.

19. The project may be developed in phases following plat recording. All required plat improvements, whether public or private, shall be completed for each phase.

20. All required street signs, posts and appurtenances on public improvements, rights of way or easements must be supplied by the developer and will be installed by the City.

21. The following note shall be placed on any final plat map:

    "The owners shown hereon, their grantees and assignees in interest, hereby covenant and agree to retain all surface water generated within the plat on-site."

22. Prior to final plat recording, a surety bond, or such other secure financial method acceptable to the City, in the amount of 15% of the cost of the public improvements as determined by the Public Works Director must be remitted to the City and will be held for a period of two years from the date of final plat recording to guarantee against defects in materials and workmanship.

23. Improvements required for the subdivision must be completed and the final plat must be submitted within the maximum time period required by RCW 58.17.140. A one-time, one-year extension may be authorized in accordance with SMC 10.50.033(c) but the request must be made before the initial time period ends.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **N – 1**

Title: Ordinance Amending Ordinance No. 1634 Zoning Map Amendment No. 914.45.14-01 Rezone to Planned Development

Thru: Donald Wayman, City Administrator

From: Thomas R Durant, Community Planner

Action Requested: Approval

Board/Commission Recommendation: Denial

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Approval

Background / Findings & Facts:

Hearing Examiner conducted open record public hearing July 31, 2015. Prepared Findings and Conclusions recommending Denial Without Prejudice of Whispering Views Estates Planned Development with allowance for reopening the open record proceeding to allow the Applicant in its discretion to reasonably resolve incompatibility with neighboring land owners from the proposed structures on Lots 40 through 47.

The Hearing Examiner also recommended that if the City Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC the approval should be conditioned as set out in the staff report and supplemented as appropriate based on hearing testimony.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Recommended Motion:

I move the Council reject the Hearing Examiner's recommendation to deny Whispering Views Estates Planned Development, approve the Planned Development, amend Ordinance 1634 and the Official Zoning Map and adopt the Hearing Examiner's Findings and Conclusions to the extent that they support the approval.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
7/31/2015	Hearing Examiner Open Record Public Hearing
Click here to enter a date.	Click here to enter text.
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ORDINANCE_____

ORDINANCE AMENDING ORDINANCE NO. 1634 ZONING MAP AMENDMENT NO. 914.45.14-01 REZONE TO PLANNED DEVELOPMENT (PD)

WHEREAS, Chapter 35A.63 of the Revised Code of Washington authorizes the City Council of the City of Selah to adopt and amend official controls including zoning ordinances and zoning maps; and,

WHEREAS, Torkelson Construction, Inc. submitted an application to rezone 3.96 acres from Two Family Residential (R-2) to Planned Development (PD) together with a proposed development plan and program pursuant to SMC 10.24; and,

WHEREAS, Torkelson Construction, Inc. also submitted a preliminary plat and a State Environmental Policy Act (SEPA) environmental checklist for the same property and related to the proposed Planned Development; and,

WHEREAS, the Hearing Examiner considered the Planned Development together with the application for preliminary plat at an open record public hearing on July 31, 2015; and,

WHEREAS, the Hearing Examiner issued findings and conclusions and a recommendation that the rezone be denied without prejudice with allowance for reopening the open record proceeding commenced in accordance with SMC 10.24.060 to allow for consideration of and comment on additional information and amended development plan or program material submitted by the Applicant in its discretion to reasonably resolve incompatibility with neighboring land owner from the proposed structure on Lots 40 through 47; and,

WHEREAS, The Hearing Examiner also recommended that if the City Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC notwithstanding a recommendation for denial without prejudice, the approval should be appropriately conditioned on the requirements set out in the staff report for the Preliminary Plat and supplemented as appropriate based on hearing testimony; and,

WHEREAS, the City of Selah Council has considered the Hearing Examiner's findings of fact and conclusions and the City staff report dated July 24, 2015 and the Council is satisfied that the matter has been sufficiently considered; and,

WHEREAS, the City of Selah Council is persuaded that the Planned Development meets the requirements of Chapter 10.24 SMC and adopts the Findings and Conclusions of the Hearing Examiner's Recommendation dated August 16, 2015 that support the approval; and

WHEREAS, the City Council of the City of Selah finds that the zoning map amendment furthers the purpose, goals and objectives of the 2005 City of Selah Urban Growth Area Comprehensive

Plan, the City of Selah Zoning Ordinance and the public health, safety and general welfare.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are incorporated herein as the City Council's Findings. Further, the Hearing Examiner's Findings and Conclusions in support of the rezone are adopted as the City Council's Findings and Conclusions by reference hereto; now, therefore,

Section 2. Amendment. The following described real property is hereby reclassified from Two-Family Residential (R-2) to Planned Development (PD):

Lots 1A, 2A, 3A, and 4A of that certain short plat recorded under Auditor's File Number 7855129, Records of Yakima County, Washington and
Lots 1B, 2B, 3B and 4B of that certain short plat recorded under Auditor's File Number 7855130, Records of Yakima County, Washington

(Assessor Parcel Nos. 181425-33419, 33420, 33421, 33422, 33423, 33424, 33425, 33426).

Section 3. This ordinance, implementing zoning map amendment number 914.45.14-01 shall become effective five (5) days following legal publication of this ordinance or a summary of this ordinance.

Done this 25th day of August, 2015.

_____
John Gawlik, Mayor

ATTEST:

_____
Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:

_____
Robert Noe, City Attorney

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **ACTION ITEM**

8/25/2015 **N -2**

Title: Ordinance Amending the 2015 Budget for the Replacement of Carpet at City Hall.

Thru: Donald Wayman, City Administrator

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Board/Commission Recommendation: Not applicable

Fiscal Impact: $ 12,000

Funding Source: F001 General

Staff Recommendation:

Approve a $ 12,000 increase in the 2015 Budget for the replacement of carpet at city hall.

Background / Findings & Facts:

At the August 11, 2015 Council meeting approval was given for the replacement of carpet at city hall, excluding the Council/Court room.

Recommended Motion:

I move to approve the Ordinance amending the 2015 Budget for the replacement of carpet at city hall.

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
8/11/2015	Authorization was given for the replacement of carpet at city hall.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.
Click here to enter a date.	Click here to enter text.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2015 BUDGET FOR THE REPLACMENT OF CARPET AT CITY HALL

WHEREAS, the City desires to amend the 2015 budget for the replacement of carpet at city hall;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, does ordain as follows: that the Clerk-Treasurer be authorized to amend the 2015 Budget as follows:

001 General		
001.000.018.518.30.48.00	Repairs & Maintenance	$ 12,000
001.000.999.508.80.00.00	New Ending Unreserved Fund Balance	554,573

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 25th day of August 2015.

_____
John J. Gawlik, Mayor

ATTEST:

_____
Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:

_____
Robert Noe, City Attorney

ORDINANCE NO. _____

CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY

COUNCIL MEETING **INFORMATIONAL ITEM**

8/25/2015 **P – 2A**

Title: Planning Commission Minutes- August 4, 2015

Thru: Donald Wayman, City Administrator

From: Caprise Groo, Public Works Department Assistant

Action Requested: Informational - No action

Board/Commission Recommendation: Not applicable

Fiscal Impact: N/A

Funding Source: N/A

Staff Recommendation:

Information only

Background / Findings & Facts:

Information only

Recommended Motion:

Information only

City of Selah
Planning Commission Minutes
Of
August 4, 2015

Selah Council Chambers
115 W. Naches Ave.
Selah, Washington 98942

A. Call to Order

The meeting was called to order by Chairman Quinnell at 5:30 p.m.

B. Roll Call

Members Present:	Commissioners: Miller, Quinnell, Torkelson, Smith, and Pendleton.
Members Absent:	Commissioner Smith
Staff Present:	Tom Durant consultant, Caprise Groo, Secretary
Guests:	Don Wayman, City Administrator

C. Agenda Changes : None

D. Communications

1. Oral- Ms. Underwood asked the commission if an agenda was provided for the public.

Mr. Durant stated that the only thing on the agenda was 10.24.

Commissioner Miller stated his concern to have regular meeting and adequate time to make a decision. He requested to discuss what the communication standards and meeting standards were.

Mr. Wayman stated that when the Council created the ordinance canceling 10.24 they included language that required the Staff and Planning Commission to working together on revising the code.

2. Written - None

E. Approval of Minutes

1. July 21, 2015 Minutes

Chairman Quinnell asked for a motion to approve/disapprove the minutes of July 21, 2015.

Commissioner Miller motioned to approve the minutes.

Commissioner Torkelson seconded the motioned.

Chairman Quinnell stated he had a motion and a second, he asked for a voice vote. The minutes were approved with a voice vote of 4-0.

F. Public Hearings

1. Old Business - None
2. New Business - None

G. General Business

H.

1. Old Business- Revised SMC 10.24 Planned Development Zoning District **Second Draft Study Session.**

Chairman Quinnell declared that this was the second meeting of the proposed rewrite of 10.24 as directed by the City Council. He stated that he had written comments from concerned citizens and that was where they would start. He stated that anyone who wanted to speak needed to be on record and the best way to do that is at the podium

Mr. Durant wanted to make clear that this is still the study session and the Public Hearing was continued until the 25th of August. *Correction the next Planning Commission is the 18th of August.

Chairman Quinnell stated that no voting will be done at this time, but we may decide to add to or subtract from the document. Then he opened the floor for comments.

Mr. Brian Richards approached the podium and stated his address as 61 Lyle Ave, Selah WA. He stated that he saw a problem with 10.24.040 one in paragraph B. The words "as agreed".

Mr. Durant stated that the wording may be wrong.

Mr. Wayman stated he knew that in that sentence it was referring to the pre-conference.

Mr. Richards suggested that the density should be better defined.

Chairman Quinnell asked who would like to speak next.

Mr. Wayne Worby approached the podium and stated his address as 200 Weems Way. He handed out Exhibit 1. (Attached) He stated that the exhibit was a list of his concerns. He asked if he could ask question and get answers.

Chairman Quinnell answered yes.

Mr. Worby discussed a Council study session which involved the Hearing Examiner, Mr. Spurgin. Mr. Worby stated that Mr. Spurgin was asked what 10.24 should look like. He stated that Mr. Spurgin said he could not tell them. (Not as a secret, but as to 'correct' content). Mr. Worby explained that Mr. Spurgin recommended getting community input. Mr. Worby discussed a situation in Seattle that involved mixed housing. He stated that the community does not know what a Planned Development Overlay means. He asked why the time frame was 90 days and could it be extended by the will of the council.

Mr. Wayman stated that he could request a 30 day extension but could not guarantee more than that.

Mr. Worby wanted to know if the city needed 10.24 revisions and if so what data was used to determine the need. He stated that not all Cities have Planned Development Overlays. He stated that the original PDO came out as a mixed use application that incorporated large acreage to make a community with in a community. Mr. Worby asked if he could get responses to his questions outside the meeting or did he need to do it at this meeting.

Mr. Wayman stated that the planning commission would let him know what to add and subtract so Mr. Worby needed to make his points at this meeting.

Mr. Worby started with number 3 on exhibit 1 and continued down the list. At question #6 Mr. Worby wanted to know how small a PDO could be.

Mr. Worby and the Commission discuss density and minimum lot size

Conclusion: Density is covered by the Comprehensive Plan and is not changed by the PDO.

Mr. Worby continued to discuss density and reduction of lot size and community opinion.

Mr. Wayman replied that the market drives what people want and the developers are seeing smaller foot prints and more rentals. The approach should be what the market will bear.

Mr. Worby Related his observation about home owners and renters and impact fees. He stated his disagreement with the need for 10.24. He wanted to know why these decisions are being made.

Mr. Torkelson stated that the discussions and decisions happen at Public hearings.

Mr. Worby state that the forum needed to be bigger.

Mr. Wayman asked what Mr. Worby expected.

Mr. Worby wanted everyone in the city to know of any changes to the City code. He stated that the definition of "lot" needs to be clarified and easements needed to be additional to the lot size not part of it.

Mr. Durant stated that an access road standard would be alright, but lots unencumbered by easements are not practical.

Commissioner Miller stated that easements were on the title.

Mr. Worby proceeded to question #8. Is there any area in Selah, besides commercial, that a PDO could not be applied for?

Discussion ensued.

Conclusion: a PDO could be applied for anywhere that does not have CCR's.

Mr. Worby stated his concern about 20 foot roads.

Mr. Durant stated he could acquire data on 20 foot roads.

Mr. Wayman stated that it was accepted internationally and there are limitations on them. Mr. Wayman read the limitation to the public. Streets include gutters and sidewalks

Mr. Worby declared that the ambiguous words need be removed. He suggested using shall or shall not.

Commissioner Miller explained that the code can be too restricting.

Mr. Worby suggested highlighting all the ambiguous words and replacing them.

Mr. Wayman asked which words and where.

Mr. Worby asked if the commissioners wanted to go through the whole document word for word and remove all ambiguous words. He stated that it should not be left open. Mr. Worby moved on to #12 of exhibit 1.

Mr. Worby and Staff discuss Zoning and Growth Management act.

Mr. Worby proceeded to 12-c. He asked that compatibility be defined.

Mr. Wayman stated that he thought it had been defined in criteria.

Discussion: How many criteria have to be satisfied?

Mr. Worby suggested that all criteria be satisfied and the community should decide.

Commissioner Miller stated that the City can't make decisions for a themed PDO layout, but the plot plan must meet the criteria of the new SMC in designing them.

Mr. Worby moved on to #14 of Exhibit 1. Mr. Worby read it word for word and moved on to #15.- He questioned whether private streets are allowed in a PDO.

Discussion ensued.

Conclusion: If a development has private roads it needs CCR's for care and maintenance.

Mr. Worby continued down page 2 of exhibit 1. He stated if it cannot be enforced get rid of it.

Commissioner Miller stated that guideline help guide but not bind creativity.

Mr. Worby asked why height is not use to determine compatibility.

Discussion: Zoning

Concussion: Read 10.24.10 Development Standards section c.

Mr. Worby Proceeded to 10.24.100 D and commented again on minimum lot size.

Discussion ensued about PDO never goes around a rezone process.

Mr. Worby moved on to 10.24.110, open space

Mr. Wayman read 10.24.110 open space. That the term 'may include' is giving guidance to what qualifies as open space.

Mr. Worby stated that the word needed to be changed to 'will.'

Mr. Wayman stated that they were not limiting the use.

Mr. Worby moved on to #22 parking or 10.24.120, Development standards – He stated that parking needs to be identified and it needs to be on both sides of the street.

Mr. Durant stated that parking was something the developer and the homeowner should work that out with covenants.

Commissioner Torkelson replied that covenantss can work. The dues that are paid and moved forward would allow the Homeowners Association to deal with the person that is out of compliance.

Mr. Worby asked again to have the lot size identified.

Commissioner Miller asked if there was a different title for lots that had open space.

Discussion ensued.

Conclusion: No one was sure how the parcels would be listed. It was suggested that title would be similar to a condominium where the individual unit is owned by the title holder, along with a common 'proportional' interest in public spaces.

Mr. Worby proceeded to 10.24.140, modifications. He stated that modifications can be done after approval. He then read 10.24.140. He asked why this can be done.

Mr. Durant stated that a modification could be replacing one open space with another.

Mr. Wayman read the modification criteria. He read number 5.-'Would not adversely impact the projected fiscal projections to the detriment of the City.'

Mr. Durant gave an example of a minor modification as changing one outside appearance for another would be a minor modification.

Mr. Worby stated that 10.24 should go to the public.

Chairman Quinnell asked who was next.

Mr. Brad Smith approached the podium. He stated his address as 1309 W Goodlander Road. He stated that he would like to see a belief statement. He stated that there was no need for more homes or people. He stated that the community filter needs to be used to determine what is right for Selah.

Mr. Wayman asked "No need for People?"

Mr. Smith explained that Selah did not need to bring more people in to thrive.

Mr. Wayman asked where our children and grandchildren would go. He explained that a SEPA checklist is done and no comments have come back from the school district.

Mr. Smith stated that the school district is not going to turn kids away.

Chairman Quinnell asked if anyone else would like to speak.

Dr. Richard Weller, 50 Herlou Place, Selah, WA. He suggested more notice to the public is needed for these kind of changes to the SMC. He suggested a public information meeting. He stated the minutes needed to be more detailed. He referred to an email that was sent. (Attached H6) He asked what a high quality neighborhood was?

Mr. Wayman explained he was discussing with Mr. Graf about special zoning with higher density and solar panels and such. He explained the SEPA checklist and the questions within it. He stated that it dealt with setbacks, irrigation run off, and how it affects the neighbors.

Mr. Weller asked if the SEPA checklist was active or passive.

Mr. Wayman stated that it was both.

Mr. Weller asked Mr. Wayman to explain the process.

Mr. Wayman stated that he had been to every building site and had inspectors on site.

Mr. Weller suggested that stronger language be placed in the PDO by using shall or shall not, instead of the word 'may.' He suggested the definitions be more refined. He asked how a substantial change was defined.

Mr. Durant stated that if it was not a minor modification then it was a major modification.

Mr. Weller stated that the definition of Planned Development Overlay was a description not a definition. He stated that defining compatibility would be a challenge. He stated that compliance to him meant 100 % compliance with the code. He stated that if there is another way to look at it, it should be spelled out.

Commissioner Miller stated that the buildings themselves are regulated by the building code.

Mr. Weller wanted to know what percent of compliance needed to be met.

Mr. Durant explained that not everything had to comply and that it was planning jargon.

Mr. Weller suggested clearer definitions.

Commissioner Miller stated that complete compliance would not allow for innovation.

Mr. Weller asked if a private road needed to meet a standard if it was in a PDO.

Mr. Wayman answered yes.

Mr. Weller stated that as he understood it there was no criterion for a private road.

Mr. Wyman replied that the international fire code standard was used.

Mrs. Diana Underwood approached the podium. She asked about the ADA. She asked if renters pay taxes.

Mr. Wayman asked the commission if renters pay taxes.

Commissioner Torkelson and Commissioner Miller replied that renters pay taxes through the landlord and the landlord pays just as much as a resident.

Mr. Durant explained that taxes are based on an assessed value.

Commissioner Torkelson explained the assessed value and that it was the same across the board.

Discussion ensued: assessed property value.

Conclusion: the value of rentals and residential property are the same.

Chairman Quinnell asked who was next.

Mrs. Shirley Johnson Hoy approached the podium. She stated that she lived at 803 W Home Ave, Selah, WA. She asked about handicap accessibility.

Mr. Durant stated that it was covered by code.

Mr. Wayman expanded on that giving an example of a roof top garden. The developer would have to provide ADA access to the garden because it is common space. He explained that the building code provided for ADA access.

Mr. Johnson Hoy asked if building could be capped until the school and Commission/City Administrator could talk.

Mr. Durant explained that the school has not sent in any comments. He stated that he had asked if the school superintendent had been receiving the notices and the answer was yes.

Commissioner Miller stated that it seemed that there should be a minimum designation of units that are ADA compliant.

Ms. Katie Fountain approached the podium and provided Exhibit 2. (Attached)

Chairman Quinnell motioned to take a break.

Commissioner Miller seconded the motion.

Chairman Quinnell requested a voice vote. The break was approved with a voice vote of 4.0 (5 minute Break)

Ms. Fountain asked that the commission take the time to go over the code and to tighten up the code. She stated that her suggestions are in capital letters. (Exhibit 2- pages 2.-3). She read exhibit 2 starting on page 2 paragraph 10.24.01, purpose. She added at the end of 10.24.01 for screens that reduce the intrusion to neighboring home owners. She continued down the document.

Mr. Durant recommended dropping that paragraph because it was covered under SMC title 21.

Ms. Fountain proceeded to page 3, 10.24.100, development standards, page 3. She stated that there should be a description for lot size.

Mr. Durant stated that lots are created in the planning process.

Ms. Fountain continued with the subject of compatibility with adjacent uses.

Commissioner Miller stated that if a property was zoned for a higher density than the property next to it, that is the zoning of the property in question that is followed.

Ms. Fountain Continued with Exhibit 2 Section 10.24.150. She suggested that the word "original "at the end of the paragraph be changed to "current"

Mr. Wayman verified the word replacement of original with current in 10.24.150.

Ms. Fountain agreed.

Chairman Quinnell asked if anyone else would like to speak.

Mr. James Hanna Approached the podium. He stated that he lived at 181 Lancaster Rd Selah, WA. He stated his main concerns were the definitions, measurability, compatibility, and need verses desire. He request that the people be asked if a development is compatible.

Chairman Quinnell asked if anyone else would like to speak.

Mrs. Alana Taylor Oaks stated that her kids wanted to live and purchase homes with a little bit of land and with sidewalks. They want to live here in Selah and be part of the community. They want single family dwellings.

Chairman Quinnell asked if anyone else would like to speak.

Mr. John Oaks asked about the 15% open space, and whether the front yards of these units would/should be counted.

Mr. Wayman stated that it could be if it is collectively owned and not privately owned. CCR's would cover it through the homeowners association

Mr. Oaks asked who paid the taxes on open space.

Mr. Durant and Mr. Wayman answered the home owners association.

Mr. Oaks asked why a person would want to build a home in a community of rentals.

Mr. Miller stated that if you wanted the lawn taken care of you buy into a homeowners association. If you want something different you buy elsewhere,

Mr. Wayman stated that PDO doesn't mean just rentals. He explained that change could bring good high quality homes that draw professionals willing to spend more money to purchase a home and still keep the community dynamics.

Mr. Worby stated that the small community environment already exists, why change it for people that are not here yet.

Commissioner Miller asked why Mr. Worby thought those people didn't live here.

Mr. Worby stated that if Selah was growing then they don't live here.

Commissioner Miller explained that families grow and those kids want to live here. They are already here.

Discussion ensued. How should Selah grow and where do the children of the families buy homes in Selah.

Conclusion: quality housing will bring quality people.

Chairman Quinnell asked if anyone else would like to speak.

Mr. Wayman recommended a continuation of the hearing to create a final draft to be discussed at the next Planning Commission on August 18th, 2015.

Chairman Quinnell asked for a motion.

Commissioner Torkelson motioned to continue two weeks from today

Discussion ensued.

Commissioner Miller seconded the motion.

Chairman Quinnell had a motion and a second to continue the discussion and revisions at hand until the next Planning Commission meeting. He requested a voice vote and the motion was approved with a voice vote of 4-0

2. New Business-

H. Reports/Announcements

1. Chairman
2. Commissioners
3. Staff- Mr. Durant discussed the sept 1, 2015 meeting and the conference of governments.

Mr. Wayman stated that there would be no respite for some time.

I. Adjournment

Commissioner Miller motioned to adjourn the meeting, Commissioner Torkelson seconded the motion. Chairman Quinnell adjourned the meeting at 8:57 pm with a voice vote of 4-0.

Chairman