Torkelson Construction

Class II Use Appeal

File #926.45.15-02

CITY OF SELAH

CLASS 2 USE PERMIT APPLICATION

Assigned File No.: 926.45.15-02

APPLICATION REQUIREMENTS (print or type information)

Date Submitted/Received By: 5/19/15

☐ Non-Refundable Application Fee

☐ Site Plan (one copy, B&W, drawn to scale, max. size 11" x17")

THE APPLICATION AND REQUIRED SUBMITTALS MUST BE COMPLETED AND SUBMITTED BEFORE THE APPLICATION IS ACCEPTED AS COMPLETE BY THE CITY.

APPLICANT'S NAME: Torkelson Construction Inc

APPLICANT'S ADDRESS: PO Box 292 Selah Wa 98942

Signature

TELEPHONE: (work) 509 697-3305 (~~home~~ cell) 945-0133

NAME OF LEGAL PROPERTY OWNER: Carl + Candi Torkelson
(If different from applicant)

ADDRESS: 101 Heritage Hills dr
Selah Wa 98942

Signature

TELEPHONE: (work) Same as above (home) _____

Tax Parcel # 181425-33426 Legal description of property: _____

(attach if lengthy)

Zoning Classification: R-2 Comprehensive plan designation: 12 units to the Acre

Summary of proposed Class 2 Use: We would like to add 5 units to the existing unit. This would form a 6 plex. We will use the same master plan as the existing unit

(Attach additional sheets if necessary to describe or explain the proposed Class 2 Use)

FOR ADMINISTRATIVE USE ONLY

Date Application Received: _____

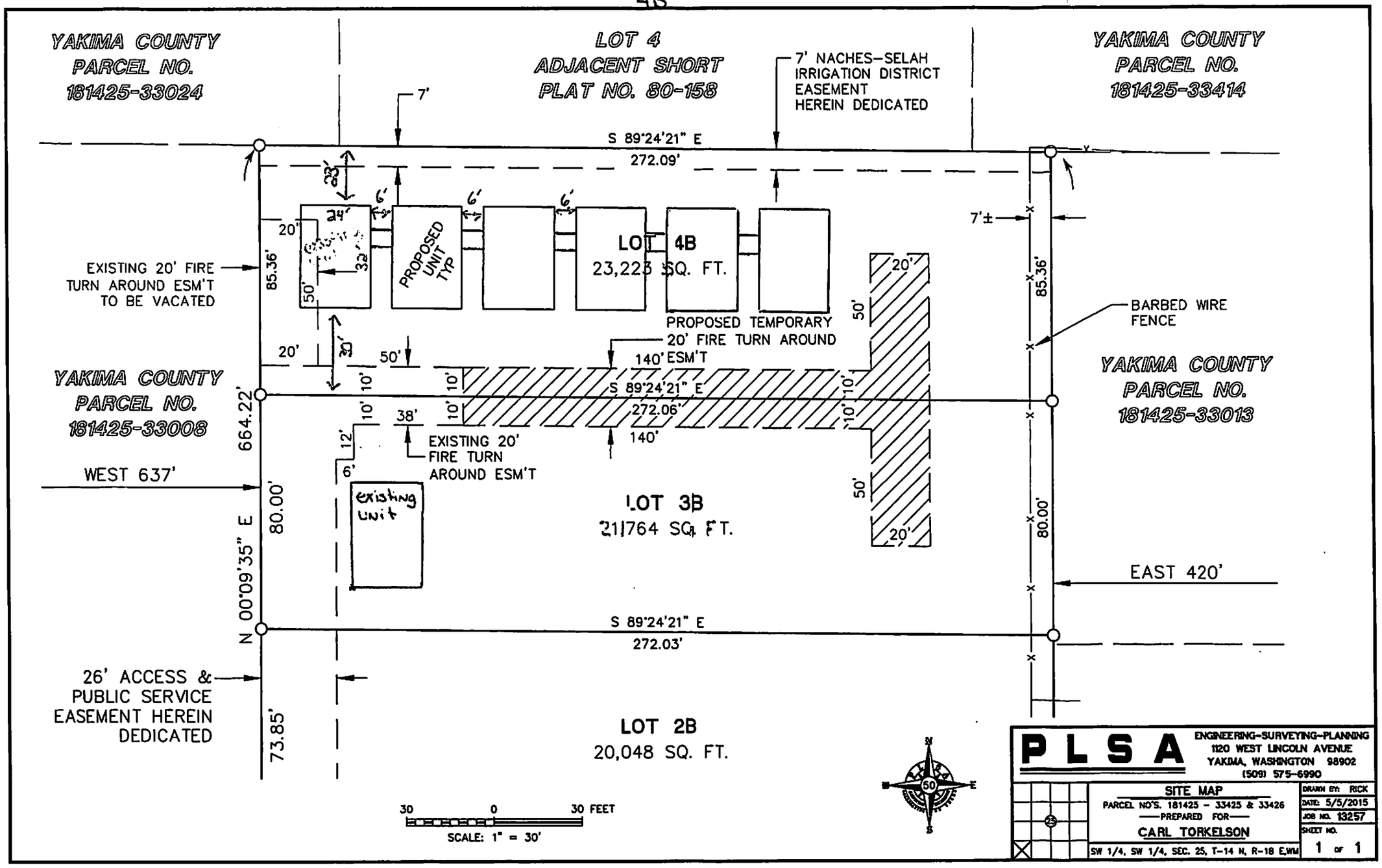
Date Application Accepted as Complete: _____
(statute allows for 28 day application review)

Date of Mailing of Notice to Property Owners within 600 feet of Proposed Project Site: _____
(if known at time of application acceptance)

Date of Publication of Legal Notice: _____
(if legal publication is required)

APPLICATION APPROVED: _____ **APPROVED W/CONDITIONS:** _____ **DENIED:** _____
DATE: _____

. 20' Goodlander
4B



PLSA
ENGINEERING-SURVEYING-PLANNING
1120 WEST LINCOLN AVENUE
YAKIMA, WASHINGTON 98902
(509) 575-6990

SITE MAP
PARCEL NO'S. 181425 - 33425 & 33426
—PREPARED FOR—
CARL TORKELSON
SW 1/4, SW 1/4, SEC. 25, T-14 N, R-18 E.WM

DRAWN BY: RICK
DATE: 5/5/2015
JOB NO. 13257
SHEET NO. 1 OF 1

Yakima County GIS - Washington

Land Information Portal

[Print Map]
[Close Map]

Yakimap.com

Map Center: Range:18 Township:14 Section:25

2013 Ortho Photography

City Limits
Sections
Contours

WWW.YAKIMAP.COM
Yakima County GIS
128 N 2nd Street
Yakima, WA 98901
(509)574-2992

One Inch = 300 Feet
Feet 200 400

MAP AND PARCEL DATA ARE BELIEVED TO BE ACCURATE, BUT ACCURACY IS NOT GUARANTEED; THIS IS NOT A LEGAL DOCUMENT AND SHOULD NOT BE SUBSTITUTED FOR A TITLE SEARCH, APPRAISAL, SURVEY, FLOODPLAIN OR ZONING VERIFICATION

Copyright (C) Yakima County GIS
Printed On: 6/16/2015 3:31:30 PM

Patrick Spurgin,
Hearing Examiner:

I am writing of my concerns on the Carl Torkleson Development. This area located on East Goodlander is already struggling with traffic issues. The intersections is a nightmare at peak traffic times and with this additional development it will add approximately 100 more cars to the already congested road.

This area surrounding this development is zoned R-1 and consists of single family dwellings on an acre or more of land, there is no reason to put in an R-2 density into this neighborhood. It does not fit with the dynamics of the area. This development should be built under R-1 codes single family dwellings. Not to mention these three story houses are ugly, they only have windows on two sides of the house and doors on one side on the garage which is one the bottom.

The private road that was constructed was only built 20 feet wide to serve 8 duplexes, it was not designed to handle the traffic load of R-2 density.

The road designed does not have any sidewalks or gutters,

The grade of this road is way to steep to be dumping into a busy street

Who will take care of the properties, Renters will not take the responsibility to maintain the up keep like a homeowner would. There should be a maintenance agreement in place to make sure all roads will be kept up and snow removed.

These units will add about 100 renters, plus approximately 100 more children for our schools. These Renters will not be paying your taxes.
Who is going to cover the cost of the Fire Department, The Police Department, The Schools, The road maintenance The renters pay rent to Carl he gets there monies. The renters who use these services pays nothing into the system that they are overloading.

Selah has become a town with more renters than homeowners, who will pay the taxes for Police, Fire Departments, schools, road repair it wont be the approximately 200 units of Renters these contractors want to build. How will the City Manage all this new construction.

Carl Torkleson does not care about anything but adding units to charge rent to line his pocketbook. He does not care about the City, City taxes or what his multifamily units will look look like in the public's eye.

Don't let greed build our city

There is a huge conflict of interest – Don Wayman is the person who gets to review the class two review applications. Don is a renter of Carl's which puts him in a very awkward position. Don should not be allowed to make the decision on these applications.

Thank You

Brandi Wedman
424-9122

JUN 10 2015
CITY OF SELAH
PUBLIC WORKS

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Sarah Lancaster
961-5252

JUN 10 20
CITY CLERK
PUBLIC RECORDS

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Ashley Keller

JUN 10 20
CITY C
PUBLIC

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452-0566

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580-0869

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307-1113

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Cotton Beck

CITY OF SELAH
PUBLIC WORKS

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The area surrounding this development is zoned R-1 and consists of single family dwellings on an acre or more of land, there is no reason to put in an R-2 density into this neighborhood. It does not fit with the dynamics of this area. There are no actual figures printed in the codes for the 10.4 density. This development should be built under R-1 codes - single family dwellings.

Carl was granted permits for one duplex on 8 lots. He choose to build a three story rental house on each one. That is all he should be able to build.

The private road that was constructed was only built 20 feet wide to serve the 8 duplexes, it was not designed to handle the traffic load of R-2 density (40 to 48 rentals). He should have a 50 foot to service this development.

The road designed does not have any sidewalks, curbs or gutters. How will you control water runoff?

There is not enough adequate parking areas. There are no Handicap parking spaces. Carl stated in City hall meetings that people can park at the High School. With no sidewalks or crosswalks this should not be acceptable.

The road is not wide enough to give emergency vehicles the proper space needed to maneuver within this complex to access homes if needed.

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Thank You
Megan Beard

JUN 12 2015
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Elizabeth Bye

JUN 12 2015
CITY OF SELAH
PUBLIC WORKS

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6-11-15

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14 LANCASTER RD

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JUN 1 2 2015
OF SELAH

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CITY OF SELAH
PUBLIC WORKS

DW Roth
222 Lincoln Rd
Selah Wa 98942

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Patricia K. Logge
222 Lancaster Rd
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SELAH WORKS

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JUN 1 2 20
CITY OF SELAH
PUBLIC WORKS

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PUBLIC WORKS

June 11, 2015

City of Selah Planning Department
Attention: Thomas R. Durand, 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

I am writing to voice my opposition to the proposed change in the zoning of the "Whispering View Estates" project on Goodlander Road by Torkelson Construction. The continual effort by this developer to cram as many houses on this property is detrimental to the entire community.

I previously shared multiple concerns regarding this development and this development in my letter dated March 18. This new proposal would add even more traffic stress to the already busy intersection at Goodlander. The surrounding neighborhood is 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.

What consideration is being given to the neighbors of this development? It is time for the planning commission to listen to the voices of neighbors and members of this community when developments such as these change the complexion of the entire community, the schools, law enforcement, fire protection and well being of the city of Selah.

High-density housing is NOT a positive force in a community such as ours. It will eventually destroy the foundations of our once rural town.

Please listen to our voices as I feel this development and its "revision" is detrimental to the character of Selah.

Sincerely,
Joyce Furstenau

Joyce Furstenau
1851 Nagler Road
Selah, WA 98942

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Ulrike H. Close

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Jeff Keller
853-6782

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191 Lancaster Rd
Selah, WA 98942

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Thank You Cheryl Harris

191 Lawrence Rd
Selah, WA 98942

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Reese Cronshaw

(Reese Cronshaw) 161 Lancaster Rd.
Selah, WA 98942

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Who will take care of the properties, Renters will not take the responsibility to maintain the up keep like a homeowner would. There should be a maintenance agreement in place to make sure all roads will be kept up and snow removed.

Selah has become a town with more renters than homeowners. These units will add about 200 renters, plus approximately 100 more children for our schools. These Renters will not be paying your taxes.
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Carl Torkleson does not care about anything but adding units to charge rent to line his pocketbook. He does not care about the City, City taxes or what his multifamily units will look look like in the public's eye. There also should be stipulations on what is considered a "multifamily dwelling" like a complete common wall, not just a breezeway, or a roof touching another roof. Don't let greed build our city.

There is a huge conflict of interest – Don Wayman is the person who gets to review the class two review applications. Don is a renter of Carl's which puts him in a very awkward position. Don should not be allowed to make the decision on these applications.

Thank You

Estelle Gunn

Patrick Spurgin,
Hearing Examiner:

I am writing of my concerns on the Carl Torkleson Development. This area located on East Goodlander is already struggling with traffic issues. The intersection is a nightmare at peak traffic times and with this additional development it will add approximately 100 more cars to the already congested road.

The area surrounding this development is zoned R-1 and consists of single family dwellings on an acre or more of land, there is no reason to put in an R-2 density into this neighborhood. It does not fit with the dynamics of the area. This development should be built under R-1 codes single family dwellings. Not to mention these three story houses are ugly, they only have windows on two sides of the house and doors on one side of the garage which is one the bottom.

The private road that was constructed was only built 20 feet wide to serve 8 duplexes, it was not designed to handle the traffic load of R-2 density.

The road designed does not have any sidewalks, curbs or gutters. How will you control water runoff.

There are no adequate parking areas.

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Thank You
Bertha M. Franz

SELAH PUBLIC WORKS

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Angela Rodel

SELAH WORKS

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Thank You
Mary Darlene Leonard

PUBLIC WORKS

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Thank You Susan Ford

JUN 1 2 2015
CITY OF SELAH
PUBLIC WORKS

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Thank You

Tallonne Hagar

JUN 1 2 2015
CITY OF SELAH
PUBLIC WORKS

June 12, 2015

JUN 1 2 2015
CITY OF SELAH
PUBLIC WORKS

City of Selah Planning Department

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,

I am writing to express my opinion regarding the proposed Class 2 use of a lot currently zoned as R2 in the Torkelson proposed "Whispering View Estates" project on Goodlander Road. I oppose this Class 2 use in R2 on the grounds that this usage is not consistent with the surrounding neighborhood of mostly single family, owner occupied residences on approximately an acre of land. In my opinion, this six-plex development is restricting a neighborhood's stability, quality. Selah Municipal Codes and the Comprehensive Growth Management Act and should be denied.

Sincerely,

Julie A Field

Julie A. Field

106 W Goodlander Road

Selah, WA 98942

June 12, 2015

City of Selah Planning Department

222 Rushmore Road

Selah, WA 98942

JUN 1 2 2015
CITY OF SELAH
PUBLIC WORKS

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Sincerely,

Sandra G Field

Sandra G. Field

106 W Goodlander Road

Selah, WA 98942

June 12, 2015

Dear Mr. Thomas Durant or Mr. Patrick Spurgin... or Class 2 reviewer,

The Application for the six-plex in "Whispering View Estates" on file at our public planning department, that is located on a single, lot should be denied. There are too many incomplete issues. This development does not ensure compatibility with existing neighbors and is not compatible with reasonably expected future developments of the neighborhood. I believe the environmental impact of this development is not consistent with the intent and character of the neighborhood.

The 3 story dwellings should be limited in height to approximate the surrounding buildings and should not be allowed to be connected as to be viewed as a duplex home. They should constructed to match the narrow black top road that was granted a variance from a standard city road for limited traffic. This road has no sidewalks or gutters on the easements for proper drainage and to ensure safety. I do not see how the community will benefit from yet another rental complex that will resemble a low income development with a high end price tag.

These units will create an eyesore and safety issues making it unnecessarily dangerous for the students attending nearby Selah schools and home owners within the development due to congestion in traffic during school and when the parks are being used. These units also should not in any way intrude or compromise any adjoining properties to accommodate the builder's gains and they do.

I believe that the final number of units being requested is 48 in Whispering View Estates. This Class 2 application is just an end run around the Planned Development Zone application. The class 2 use in the R-2 zone is trying to avoid the public hearing process by submitting a different application. This area as a whole should have remained zoned single family dwellings. The six-plex should be denied, but if allowed, construction should be made to approximate the surrounding homes. In conclusion, please accept my request for denial of the requested construction application for a six-plex on "Whispering View Estates" by Mr. Torkelson using the Class 2 review.

Sincerely

Shirley Johnson-Hoy

Shirley Johnson-Hoy

TO MR DURANT / MR SPURGIN

June 12, 2015

My husband and I am writing this letter in **total opposition** *to a proposed land use application by Carl Torkelson for the proposed six-plex at 207 East Goodlander Road,* ***This proposed land use is Not acceptable and is inconsistent with the Comprehensive Growth Management Act and the Selah Municipal code.***

10.02.030 - Purpose. The controls set forth in Title 10 are deemed necessary in order to:
Implement the city of Selah Urban Growth Area Comprehensive Plan enacted pursuant to the Washington State Growth Management Act; and assure the orderly development of the city consistent with the Selah Urban Growth Area Comprehensive Plan goals and policies; To encourage orderly growth while integrating new development and redevelopment into the fabric of the community while maintaining a high quality environment; Regulate lot coverage, population density & distribution, and the location & height of structures; (which I remember someone having to move their home when they had built above the limits of height), to provide adequate light, air, sanitation, and drainage; Protecting the social and economic stability of resources and lands within the city; To reduce the menace to the public safety resulting from the improper location of homes, commerce and industry in a single area; and otherwise promote the public health, safety and general welfare.
I believe that the development site is subject to review for the zoning that was applied at the time of the 2000 land use review and again as it was annexed into the city of Selah. language identifying a "medium density of 12 Any change of density is supposed to occur in the county before annexation. Additionally the annexation area is supposed to be based on straight, squared off lines. Discussion at the City Council meeting during this time reflects this concern.

"Bringing the land into current configuration required a Short Plat action that, from a 2.97 acre parcel and a 1.0 acre parcel, there was a creation of eight parcels of approximately one half acre each. In order to create these parcels that didn't front a public road a variance was required". The variance was conditionally a private street that has a 26' wide easement on the West edge of the property, for utilities and a 20' wide paved surface that was to serve all eight lots with a single duplex sited on each lot. No buildings or part of buildings were to be more than 150' east of the road. Curbs, gutters and sidewalks were eliminated in the process, as a public safety issue this was totally in error." This short plat action was conducted in May '14. In Jan '14 Mr. *Torkelson applied for a 48 unit Planned Development as the "legal owner" of the property*, Mr. Noe (city attorney) has determined the claim of ownership to have been a mistake. Mr. Torkelson claims he was representing Dan Bower at the time but the same plan resurrected itself and is currently waiting for a preliminary plat hearing in front of a Hearing Examiner. On appearance it lacks integrity and is wishy washy. Shame.

We feel that a short plat action, prevents any division or altering of the parcels for 5 years. Building permits were issued to Carl Torkelson Construction in Nov '14 and Feb '15, one for each lot that had been identified as divided for duplex sites, the land was still *under ownership of Dan Bower until Dec '14.* We ask that this Class 2 review search out the site plans for the construction of each of the buildings that were constructed from these permits. Are they Duplex plans or single family? Are the site plans accurate in procedure and design?
Remember the private road was conditionally allowed because of the identified duplex need. A six-plex is totally

in conflict with the granted variance. A development of the design that Mr. Torkelson is pursuing ***requires*** **Standard City roads including two "standard street" accesses** from the feeder arterial streets. The private road will not meet any of the standards of Selah Municipal Code for Standard roads in residential areas. Based on the of conditionality of the Variance for the private road there is no way the proposed six-plex should be allowed. How many of the eight lots will be needed to be filled with six-plexes before a recognition that the units are in violation of the one duplex per lot density that was identified for the private road variance?
Plus, the City of Selah Urban Growth Area Comprehensive Plan and the Growth Management Act have many sections that identify considerations that must be weighed in land use approvals.
(i) Objective LUGM 3 Encourage economic growth while maintaining quality development
(ii) Objective HSG 1 Maintain and upgrade the character of existing residential neighborhoods.
(iii) Objective HSG 1.2 encourages "new single-family development throughout existing single family neighborhoods as redevelopment and infill construction at appropriate densities
(iv) Objective HSG 2 Encourage new residential development to approximate existing residential densities and housing mix levels.
(v) 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, construction and amenities warrants a different density.
(vi) Objective HSG 4 Encourage new residential construction to be compatible with existing residential development.

Objective LUGM 3 There appears to be little to no measurable economic growth for the City of Selah related to the construction of the proposed six-plex. Mr. Torkelson has failed to identify any data that supports Objective LUGM 3 as having benefited from the proposed project.
Objective HSG 1 The surrounding neighborhood of the proposed six-plex is single family residential homes has a rural low density population with traditional style ranch homes. The proposed six-plexes have almost nothing in common with the existing neighborhood that can be judged as to "Maintain and upgrade the character of existing residential neighborhoods".
Objective HSG 1.2 Demands that appropriate densities match the surrounding neighborhood. The existing neighborhood is made up of large lots and acreages with open spaces.
Objective HSG 2 Speaks to new construction that would "to approximate existing residential densities and housing mix levels". This is not the case in the construction proposed.
Policy HSG 2.1 The encouraging of maintaining residential neighborhoods at present levels is to reduce the effects of spot developments of which this proposal represents. The exception is if the developer has presented data that would convince a reasonable person that the project is of a measurable quality either in design or construction with additional amenities that would elevate the Six-plex to a standard above the neighborhood thereby warranting higher density. As for design, how can extending a closet to touch another closet of an adjacent residence be construed as a common building with any aesthetic appeal to quality design? No compelling case has been made in the application that this development elevates the design, construction or amenities to a level that qualifies higher density or any additional considerations.
Objective HSG 4 This requires compatibility with existing neighborhoods. Design, density, public safety of the roads and home ownership all are in strong contrast to the existing residences. Three story

rentals that are blocking views and in stark contrast architecturally is a direct violation of this goal Mr. Torkelson is trying to confuse issues and processes that are inconsistent with the Selah Municipal Codes and the Growth Management Act. This Six-plex project and the Planned Development are an attempt to circumvent good sound community planning and development rules and guidelines. Our neighborhoods are the backbone of community values and should be protected at all times. Additionally, the standards for public safety should never take a back seat for a developer's profits. The largest investment most families make in their lifetimes is their home, financially and emotionally. At the very least our codes and regulations reflect this belief and are set in place to maintain and protect these investments.

1.60.060 - Conflict of interest.

"No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect financial or family interest, or any matter wherein the examiner has had substantive ex-parte pre-hearing contacts with proponents or opponents wherein the issues were discussed." This is the language for the Office of the Hearing Examiner in the Selah Municipal Code. Due to the fact that Mr. Wayman, Selah City Supervisor, is living in an apartment of Mr. Torkelson's on the East Goodlander site and having been involved in ex-parte conversation on this development, Mr. Wayman has the same obligation to the appearance of fairness as the Hearing Examiner to recuse himself from this decision.

In the process of review, I believe the elements to be considered are of such public interest that it should be conducted at an open public meeting and not as a Class 2 review. **Please move this decision into the jurisdiction of a Hearing Examiner with public comment as in a regular subdivision approval. This six-plex development is violating a neighborhoods stability, quality, Selah Municipal Codes and the Comprehensive Growth Management Act and should be denied.**

~Diane L. Underwood~
In The End Only Kindness Matters

Abdul Maroof

402 North 9th Street, Selah, WA 98942.1012

MR. JAMES B. HANNA

181 Lancaster Road
Selah, WA 98942
509 713-3213
hannajbx@gmail.com

3/30/15

Mr. Thomas R. Durant,
Community Planner;

Mr. Pat Spurgon,
Hearing Examiner;

City of Selah
Planning Department
222 S. Rushmore Road
Selah, Washington 98942

Re: File No. 914.45.14-01, 971.4514-01 - "Whispering View Estates" Torkelson Construction, Inc. Notice of Application, and Environmental review

Gentlemen:

I received notice of the above referenced planned re-zone and subdivisions as I am a "surrounding proper owner" near the proposed development. My residence is shown in the accompanying aerial photograph, in the upper right (N.E.) corner, and extends beyond the photographed area. I purchased this residence in 1964, but my history here in Selah extends back to 1934, when I was born. At that time my parents and grandparents were also residents of Selah. When I hear people say that they have lived here for twenty years, I think "Welcome to the area, I think you will enjoy your *new* home."

When, in 1964, I purchased my home; I had no illusions that the surrounding area would remain forever as open land, as it was then, with only a few homes. I did, however expect that it would remain a generally rural area, as it is now, with single family homes, on fairly large parcels of land, occupied by resident owners. I could not, and cannot, conceive of the impact of the intrusion of an (as proposed) 48 unit

project of three story dwellings, each sited upon only the land on which they cover.

In the colorized photograph, the proposed project is highlighted in red. (This was not done by myself, but was in the copy which I received.) It shows the present character of the land in question. On this property, which I understand is 3.97 acres, there is one house, a few out buildings and a structure designed as an equestrian arena. All of which fits, esthetically and compatibly, with the surrounding land use. It is my understanding that the area in question was, until recently, part of the county, as is the other property, north of Goodlander Road, which surrounds it. I further understand that until this property was annexed to the city of Selah, it was zoned as R1, although I think there are some areas nearby which may be R2. Nowhere in the adjacent, or surrounding area is there any land zoned PD. If one were to extend the photographed area north, as far as Magonagle Road, I doubt that the number of residences would exceed or equal the number of units proposed in the planned project. Compare the proposed plat of the project, superimposed upon the highlighted area of the photograph, to get an idea of how unharmonious this proposed project is with the surrounding area.

I am not any sort of expert on the definitions used in zoning. I leave to others, the task of arguing the intricacies of laws, regulations, and codes. However it seems that any reasonable person would conclude that in spite of whatever technicalities there are in the codes, that which is proposed is simply so different from the rest of the area to be considered, in any way compatible, or even similar. I am reminded of the pre-school TV series *Sesame Street,* where simple examples were used to teach such concepts as *same* and *different.* I think that even the kindergarten kids would tell you that the proposed project is clearly different from the existing neighborhood.

I am not accusing those who are financially or physically involved with this project with being evil, or operating in an illegal manner. Some might say that they have been somewhat more interested in their own profit than in being in strict compliance with codes and regulations. However, I believe it is only natural for those in business to desire to make as much money as possible, to view codes and regulations as obstacles rather than guidelines, and generally put their own interests above those of others, who they consider to be generally an obstruction or nuisance, to their plans. Laws, codes and regulations, however, are set in place to assure that, not only the interests and profit of the business are taken into consideration, but also, the interests of the public at large, and particularly the interests of those who will be affected by any change or proposal.

While it may be perfectly proper for a developer to wish to promote his or her own

interests, to the exclusions of all others; officials, such as yourselves, have a wider and more through duty. That is to enforce the codes for the benefit of all, to make sure that, the general good is taken into account, and that those who desire to make changes for their own benefit, are held to a strict interpretation of the rules. Further, to ensure that limits are not considered being guidelines or targets, and that when a range of options is stated, that the upper limit of that range is not set as a target, and even that stretched or exceeded if possible.

In the present case, as the developer is, and has been, an official of the city, one would think he should be held to a higher standard, on that basis alone, to know and operate in a manner strictly in adherence with the codes and regulations; and also to have considered, and planned for, all possible contingencies that his project cause or encounter; and to already have in place ways and means to take care of them. For someone new to the business, or a member of the general public, who is not acquainted with all possible impacts and possibilities, to not be as well informed is understandable (and, one would hope, the exercise of your duties would prevent constructing any disasters waiting to happen,) I would submit that your scrutiny and duties should be applied even more carefully to one who knows, or should know, what problems may exist but, in the pursuit of profit, has ignored them.

While I am not an expert on the details of the codes and regulations, nor on the process of enforcement of them, it seems that there are many items of density, grading, fire protection, water supply, parking, sidewalks, water run-off, traffic, and safety, as well as the general incompatibility to the neighborhood, which have not been considered or have been ignored. It appears that construction has begun, and is proceeding, without your final approval; and that the only and last hope for such things to be considered, lies in your hands. I believe that you have the legal and ethical responsibility to ensure that the good of the many is not subrogated to the good of the few, or the one.

In closing, I recall a riddle posed by Mr. Mark Twain, wherein the stated the case of the four legged dog. "The dog," said Mr. Twain "has four legs." "But if we call his tail a leg, how many legs does he have?" The answer is, of course, four. Simply calling his tail a leg does not make it so. My point is that, while the developer has called his actions in arranging for the property in question to be admitted to the city, and at the same time changing the zoning from R1 to R2; and in ignoring the requirements for actual ownership of the property involved, as proper and honorable, that in itself does not make it so. Likewise, the view of the developer that all rules, codes, and regulations have, and are, being followed; and that all contingencies have been planned for, or that his plan is somehow

compatible with the surrounding community, is also only his opinion and does not make it so.

I urge you to consider carefully, all the questions, problems, and the impact of this change in the community will have; and to conclude as I have, that this project should be stopped, and the area be developed in a manner similar to, and compatible with the community and neighborhood which surrounds it.

I should like to exercise my right to submit further written and oral testimony in any future proceeding on this matter.

Sincerely yours,

Mr. James B. Hanna

(attachments to original not included, original signed by sender.)

Date: June 10, 2015

Planning Department
File #926.45.15-02
222 South Rushmore Road
Selah, WA 98942

Dear Mr. Durant and the Planning Department of Selah:

Loop holes. We write this letter to you because of a supposed loophole in the law. You have already received many letters opposing the 48 townhouse PD, yet we waste our time writing, yet another letter. We are absolutely disgusted with this process. No, we do not want the proposed 6-plex. Why? It is simply a stepping-stone to the ultimate goal of 48 townhouse rentals on under 4 acres. The decision has yet to be made, yet the builder is already prepping for the next phase. Does he know something we all are not privy too? It appears that he does. The people of Selah are not ignorant of the politics and "handshaking" that seems to go on behind closed doors. You already gave the builder a road variance to serve 8 townhouses. That road is simply not large enough to serve any more. There are many reasons why this development is ludicrous and needs to be halted. Please REREAD the letters that were sent regarding "Whispering Pines Estates." The residents of our community are banding together because WE care about what our beloved Selah looks like today and in the future. Immediate property tax profits for the city with disregard to long-term effects are shortsighted and foolish. Again, handle this properly. The community is watching and is eager to see things change for the good in code and in elected positions.

Sincerely,

David and Lisa Gordon
90 Columbus Way

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LAW GROUP

JUN 11 2015
CITY OF SELAH
PUBLIC WORKS

Raymond G. Alexander
Kim K. Anderson
Alan R. Campbell
Gregory Carroll
James S. Elliott
Robert N. Faber
Mark G. 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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Raymond G. Alexander
Adam K. Anderson
Alan D. Campbell
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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

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.

HALVERSON | NORTHWEST LAW GROUP P.C.
Yakima Office: 405 E. Lincoln Avenue | PO Box 22550 | Yakima, WA 98907 | p) 509.248.6030 | f) 509.453.6880
Sunnyside Office: 910 Franklin Avenue, Suite 1 | PO Box 210 | Sunnyside, WA 98944 | p) 509.837.5302 | f) 509.837.2465

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

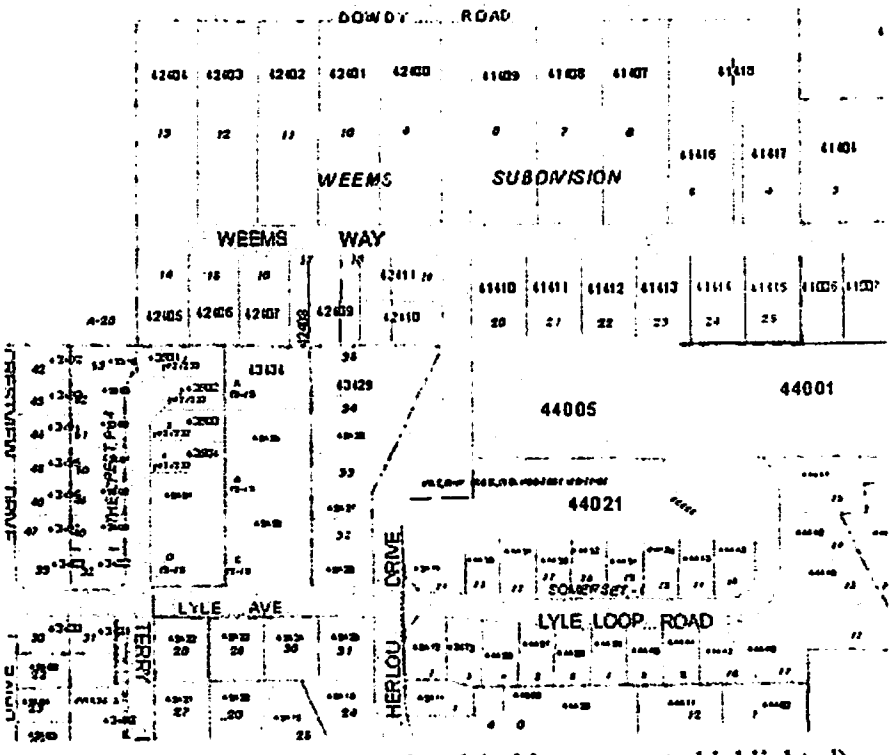

Figure 1. Somerset II Neighborhood (subject property highlighted)

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
2009 JAN -9 PM 2:26
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

Velikanje Halverson P.C.
405 East Lincoln Ave.
P.O. Box 22550
Yakima, WA 98907
(509) 248-6030

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.

Velikanje Halverson P.C.
405 East Lincoln Ave.
P.O. Box 22550
Yakima, WA 98907
(509) 248-6030

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

Velikanje Halverson P.C.
405 East Lincoln Ave.
P.O. Box 22550
Yakima, WA 98907
(509) 248-6030

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).

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, 2009.

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 22550
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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Velikanje Halverson P.C.
405 East Lincoln Ave.
P.O. Box 22550
Yakima, WA 98907
(509) 248-6030

COPY

HALVERSON | NORTHWEST
LAW GROUP

CITY OF SELAH
JUN 26 2015
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Linda A. Sellers
Michael F. Shinn
Sara L. Watkins*
Stephen R. Winfree

*Also Oregon Bar Member
+Of Counsel

June 26, 2015

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

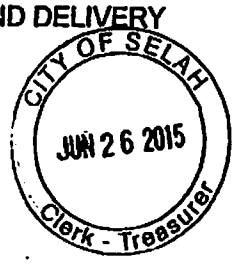
ALVERSON | NORTHWEST
LAW GROUP

Raymond O. Alexander
Adam K. Anderson
Alan D. Campbell
J. Jay Carroll
James S. Elliott
Robert H. Faber
Mark E. Fickes
Carter L. Fjeld
Frederick H. Halverson+
Paul E. Hart+
Kelen 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:tla
Enclosures
CC with encl: Bob Noe, Selah City Attorney

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:

CITY OF SELAH
AFFIDAVIT OF MAILING

STATE OF WASHINGTON
COUNTY OF YAKIMA

I, Caprise Groo, being first duly sworn on oath dispose and says:

I am an employee of the City of Selah, 222 South Rushmore Road, Selah, Washington; that I did on the 29 day of May, 2015 caused to be mailed, 45 envelopes, containing a true and correct copy of a Notice of Intent to Approve a Class 2 Use (926.45.15-02). Said envelopes mailed from Selah, WA. with the correct first class postage and addressed to the owners of property listed by the Yakima County Treasurer as being the legal owners of real property located within 600 feet of the proposal.

A listing of the legal owners of real property to whom notice has been mailed is contained in file 926.45.15-02

Caprise Groo

Caprise Groo

STATE OF WASHINGTON
COUNTY OF YAKIMA

On this day personally appeared before me Caprise Groo to me known to be the individual referenced herein and who caused to be mailed the Notice of Intent to Approve a Class 2 Use (926.45.15-02).

Given under my hand and official seal this 29th day of May 2015.

Cynthia L. Graziano

Cynthia L Graziano

Notary Public in and for the State of Washington, residing at Yakima, WA. My term expires 7-14-18.

CYNTHIA L GRAZIANO
COMMISSION EXPIRES
NOTARY PUBLIC
07-14-18
STATE OF WASHINGTON

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Selah, WA 98942

Diane Lynn Underwood
402 N 9th Street
Selah, WA 98942

181425-33015/6
DONNA BAZE
90 LANCASTER RD
SELAH, WA 98942

181425-33018
SERGIO & GEORGINA GUTIERREZ
50 LANCASTER RD
SELAH, WA 98942

181425-33413
JOHN & HELEN TESKE
182 LANCASTER RD
SELAH, WA 98942

181425-33017
JAMES & DONNA GARNER
P O BOX 879
SELAH, WA 98942

181425-33019
RAY FRIEDRICH
60 LANCASTER RD
SELAH, WA 98942

181425-33414/6
JOHN & HELEN TESKE
182 LANCASTER RD
SELAH, WA 98942

181425-33415
STELLA WHITEHEADHUBBARD
180 LANCASTER RD
SELAH, WA 98942

181425-33418
PAUL & CONNIE JAMES
111 E GOODLANDER RD
SELAH, WA 98942

Halverson/Northwest
Mark E Fickes
405 E. Lincoln Avenue
Yakima WA, 98901

Hereth Family Trust
1141 Selah Loop Rd.
Selah, WA 98942

Torkelson Construction Inc
P.O. Box 292
Selah, WA 98942

ane Lynn Underwood
02 N 9th Street
Selah, WA 98942

Verified
5-27-15
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Lonnie & Diana Welch
1101 Selah Loop Rd
Selah, WA 98942

181425-33007
Floyd & Carol Sharp
981 Selah Loop Rd
Selah, WA 98942

181425-33008
Davis & Lisa Gordon
90 Columbia Way
Selah, WA 98942

181425-33013
Keith Schlenker
120 Lancaster Rd
Selah, WA 98942

181425-33014
Jason & Kari Hartman
80 Lancaster Rd
Selah, WA 98942

181425-33021
Ryan & Tiffany Babat
70 Columbus Way
Selah, WA 98942

181425-33022
Clelan & Janice Terry
50 Columbus Way
Selah, WA 98942

181425-33024-33025
Selah United Methodist Church
1061 Selah Loop Rd
Selah, WA 98942

181425-33026
Bruce & Connie Rockwell
961 Selah Loop Rd.
Selah, WA98942

181425-33032
Kendra Kupp
1145 Selah Loop Rd
Selah, WA 98942

181425-33401
O'dell & Colleen Bowers
PO Box 776
Selah, WA 98942

181425-33401-33402-33404
Pamela Bowers
13280 NE 183rd St
Woodinville, WA 98072

181425-33409
Roger & Carol Floyd
220 Lancaster Rd
Selah, WA 98942

181425-33410
Dennis & Patricia Rogge
222 Lancaster Rd
Selah, WA 98942

181425-33411-33412
Dean & Melissa Wilson
PO Box 67
Selah, WA 98942

1425-33417
son Ross
107 E Goodlander Rd
Selah, WA 98942

181425-33418
Paul & Connie James
111 E Goodlander Rd
Selah, WA 98942

181425-34002
Robert Arnt
131 Lancaster Rd
Selah, WA 98942

181425-34004
James Hanna
181 Lancaster
Selah, WA 98942

181425-34005
Jay & Cheryl Harris
191 Lancaster Rd
Selah, WA 98942

181425-34006
Reese Crenshaw
161 Lancaster Rd
Selah, WA 98942

181425-34007
Lonnie & Sandy Upson
151 Lancaster Rd
Selah, WA 98942

Howard & Elizabeth Bayne
151 Lancaster Rd
Selah, WA 98942

181425-34010
Larry Dean & Pia Pardi Hull
901 Summitview Ave Suite 250
Yakima, WA 98902

181425-34011
Martin & Andrea Montes
41 Lancaster
Selah, WA 98942

181425-34012
Paul J Wangler Jr
301 E Goodlander Rd
Selah, WA 98942

181425-34013
Laura & Jose Luis Palacios
305 E Goodlander Rd
Selah, WA 98942

181436-22001
Selah School District #119
4 W Naches Ave Suite H
Selah, WA, 98942

Joyce Furstenau
1851 Nagle Rd
Selah, WA 98942

Joseph C May
4813 Maple Ave
Yakima, WA 98901

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STATE OF WASHINGTON
COUNTY OF YAKIMA

I, Caprise Groo, being first duly sworn on oath dispose and says:

I am an employee of the City of Selah, 222 South Rushmore Road, Selah, Washington; that I did on the _19_ day of _June__, 2015____ caused to be mailed, _10_envelopes, containing a true and correct copy of a Notice of Final Administrative Approval of a Class 2 Use (926.45.15-02). Said envelopes mailed from Selah, WA. with the correct first class postage and addressed to the owners of property listed by the Yakima County Treasurer as being the legal owners of real property located within 600 feet of the proposal.

A listing of the legal owners of real property to whom notice has been mailed is contained in file 926.45.15-02

Caprise Groo

Caprise Groo

STATE OF WASHINGTON
COUNTY OF YAKIMA

On this day personally appeared before me Caprise Groo to me known to be the individual referenced herein and who caused to be mailed the Notice of Final Administrative Approval of a Class 2 Use a Class 2 Use (926.45.15-02).

Given under my hand and official seal this _19th_ day of _June_, 2015.

Cynthia L. Graziano

Cynthia L Graziano

Notary Public in and for the State of Washington, residing at Yakima, WA. My term expires _7-14-18_____.

CYNTHIA L GRAZIANO
COMMISSION EXPIRES
NOTARY PUBLIC
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181 Lancaster
Selah, WA 98942

Davis & Lisa Gordon
90 Columbia Way
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Dennis & Patricia Rogge
222 Lancaster Rd
Selah, WA 98942

Jay & Cheryl Harris
191 Lancaster Rd
Selah, WA 98942

Reese Crenshaw
161 Lancaster Rd
Selah, WA 98942

Julie Fields /Sandra Fields
106 W Goodlander Rd
Selah, WA 98942

Diane Underwood
402 North 9th Street
Selah, WA 98942

Abdul Maroof
402 North 9th Street
Selah, WA 98942

I

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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

CITY OF SELAH
JUN 26 2015
Clerk - Treasurer

June 26, 2015

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

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

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.

EXHIBIT A

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Raymond G. Alexander
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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
JUN 26 2015
Clerk - Treasurer

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

HALVERSON | NORTHWEST LAW GROUP P.C.
Yakima Office: 405 E. Lincoln Avenue | PO Box 22550 | Yakima, WA 98907 | p) 509.248.6030 | f) 509.453.6880
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

CITY OF SELAH

Public Works Department
222 South Rushmore Road
SELAH, WASHINGTON 98942

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

June 30, 2015

Carl Torkelson
Torkelson Construction, Inc.
PO Box 292
Selah, WA 98942

RE: Appeal of Class 2 Use Decision issued June 9, 2015; File No. 926.45.15-02

Dear Mr. Torkelson:

On June 26, 2015 Mark E. Fickes of the Halverson Northwest Law Group filed an appeal of the above-referenced decision on behalf of John and Helen Teske. The Class 2 decision approved your request to construct a multiple family residential development of five new units attached to an existing single family residence at the north end of Bowers Drive.

The City does not have the authority to stop you from moving forward with this project after an appeal has been filed, and will issue construction permits that can be legally issued, but we are notifying you that if you do proceed, it is at your peril and if the appeal is successful in determining that the Class 2 approval was wrongly issued, you may have to undo any work that was undertaken at your own expense.

We will notify you of the time and place of the appeal hearing when it is sent.

Sincerely,

Donald C. Wayman
City Administrator

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Michael R. Kenyon
Rachel B. Turpin
Ann Marie J. Soto
John P. Long, Jr.
Kim Adams Pratt
Robert F. Noe
David A. Linehan
Amy S. Mill
Charlotte A. Archer

KENYON DISEND

Bruce L. Disend
Doug F. Mosich
Of Counsel

Shelley M. Kerslake
1967 - 2014

TO: Tom Durant, City of Selah Planner

FROM: Robert F. Noe, City Attorney

DATE: July 9, 2015

RE: Torkelson Class 2 Permit Application - Alleged Appearance of Fairness and Conflict of Interest Issues

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There have been allegations made that the City Administrator violated the Appearance of Fairness Doctrine and that he has a "conflict" that precludes his ability to issue an administrative decision on a Class 2 land use permit application involving Applicant Torkelson Construction Company ("Torkelson"). The allegations are based, in part, on the fact that the City Administrator is currently a residential tenant and lessee of property owned by Torkelson.

The City Administrator has not violated the Appearance of Fairness Doctrine. In fact, that Doctrine is inapplicable to his decision. Further, the City Administrator does not have a "conflict" that would preclude him from making a decision on the Torkelson permit application.

Rather than re-write a summary of the law for both the Appearance of Fairness Doctrine and for addressing public official conflicts, I am simply taking excerpts from Municipal Research Services Center (MRSC) materials for use in this Memorandum. MRSC has examined both of the issues in great depth and provides municipal elected officials and appointed officers advice on these issues on a regular, if not daily, basis. The excerpted materials appear in italics, below.

A. <u>The Appearance of Fairness Doctrine</u>.

The Appearance of Fairness Doctrine does not apply to the City Administrator because he was not engaged in a quasi-judicial proceeding (hearing). MRSC explains:

> *The appearance of fairness doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed by the courts as a method of insuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine*

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attempts to make sure that all parties to an argument receive equal treatment.

The doctrine requires that adjudicatory or quasi-judicial public hearings meet two requirements:

- *they must be procedurally fair, and*
- *they must appear to be conducted by impartial decision-makers.*

In 1982, the state legislature codified the requirements for the doctrine, and applied them only to quasi-judicial actions of local decision-making bodies when a hearing is required by statute or local ordinance. See Ch. 42.36 RCW. . . .

MRSC further provides:

Types of Proceedings to Which it Applies

In 1982, the state legislature enacted what is now chapter 42.36 RCW, codifying the appearance of fairness doctrine. The statutory doctrine applies only to local quasi-judicial land use actions, as defined in RCW 42.36.010: ... those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards that determine the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.

The primary characteristics of a quasi-judicial matter are that:

- *the decision has a greater impact on a limited number of persons or property owner, and has limited impact on the community at large;*
- *the proceedings are aimed at reaching a fact-based decision by choosing between two distinct alternatives; and*
- *the decision involves policy application rather than policy setting.*

The following types of land use matters meet this definition: subdivisions, preliminary plat approvals, conditional use permits, SEPA appeals, rezones of specific parcels of property, variances, and other types of discretionary zoning permits if a hearing must be held.

The statutory doctrine does not apply to the following actions:

- *adoption, amendment, or revision of comprehensive plans*
- *adoption of area-wide zoning ordinances*
- *adoption of area-wide zoning amendments*

- *building permit denial.*

Officials and Employees Who Are Not Subject to the Doctrine

Department heads, planning department staff, and other municipal officials who don't conduct hearings or engage in quasi-judicial decision-making functions are not subject to the doctrine.

(Emphasis supplied).

Ex parte communications are prohibited in quasi-judicial proceedings. Here, because there was no quasi-judicial proceeding, the City Administrator engaged in no ex parte communication. In fact, the very nature of the City Administrator's position requires that he speak with a broad spectrum of persons on a daily basis on all sorts of issues, including proposed development activity within the City. The City Administrator cannot be bound to refrain from communications where there is no quasi-judicial proceeding and where he must be free to communicate with many persons with differing opinions and positions on various issues on a daily basis as part of his job.

B. Conflicts of Interest.

With respect to Conflicts of Interest, MRSC explains as follows:

Washington law governing conflicts of interest regarding municipalities is derived from the State Constitution, statutes, and from law made from court decisions (also known as common law). The general rule from which our state's conflict of interest law derives is that a municipal officer shall not use his or her position to secure special privileges or exemptions for himself, herself, or others. As expressed by our state supreme court many decades ago, the common law principle that a municipal officer is prohibited from adjudicating his or her own cause is "a maxim as old as the law itself." See, Smith v. Centralia, 55 Wash. 573 (1909).

Our state law rules regarding conflicts of interest are based on the fundamental principle that municipal officers hold a public trust and they are required to uphold that trust. These rules apply to real and perceived conflicts of interest and, as below described in more detail, include a prohibition against elected officials voting on matters in which they stand to benefit financially.

What is a Municipal Officer?

Under RCW 42.23.020(2), "municipal officer" is defined broadly to include:

1. *All elected and appointed officers of a municipality (i.e., councilmembers, county commissioners, district commissioners);*
   together with:
2. *All deputies and assistants of such officers; and*
3. *All persons exercising or undertaking to exercise any of the powers or functions of a municipal officer (including, for example, city managers, city administrators, county administrators, special district superintendents, and others).*

Common Law Conflict of Interest - Special Privileges & Exemptions

Under common law conflict of interest principles, as articulated, for example, in Smith v. Centralia, 55 Wash. 573 (1909), there is a general prohibition against a municipal officer specially benefitting financially from a matter he or she votes upon. In Smith v. Centralia, the court invalidated a street vacation ordinance because a councilmember who stood to benefit financially from its enactment cast the deciding vote.

This court-made law has subsequently been codified under chapter 42.23 RCW, specifically RCW 42.23.070. The general rule is that no municipal officer may use his or her position to obtain special privileges for himself, herself, or others. A "special privilege" relates to being allowed to do something that would otherwise be prohibited. A "special exemption" relates to being relieved from doing something that would be otherwise mandated.

Here there is absolutely nothing to suggest that the City Administrator was financially benefited or that he was otherwise impacted financially when he made his decision on this Class 2 land use permit application. There is nothing to suggest that he is receiving a special privilege or special exemption (as defined above) because he rendered a decision on the Class 2 permit application. Moreover, the City Administrator has no "contract interest" impacted by his decision on the Class 2 permit application. The City Administrator is not being asked to consider a contract and to approve a contract in which he might have some beneficial interest. MRSC explains:

What Constitutes a Contract Interest?

As provided in RCW 42.23.030, a contract interest is one in which a municipal officer would benefit from financially, either directly or indirectly. The contract must be one that is made by, through, or under the supervision of the municipal officer, in whole or in part.

Note also that a municipal officer cannot accept, directly or indirectly, any compensation, gratuity, or reward in connection with

such a contract from any other person who is beneficially interested in the contract. See RCW 42.23.030.

What is a "contract" under chapter 42.23 RCW? Under RCW 42.23.020(3), the term is defined broadly to include contracts generally (e.g., employment agreements, contracts for services, public works contracts), and also includes any sale, lease, or purchase. . . .

What is the "Making" of a Contract?

What does it mean for a contract to be "made by, through or under the supervision" of the officer under RCW 42.23.030? The Washington state supreme court has emphasized that it is the making of the contract that implicates 42.23 RCW. Only certain municipal officers are prohibited by state law from entering into contracts with their municipality because many officers do not have any authority with respect to the making (entering into) of contracts on behalf of their municipality. Note, however, that local codes of ethics may include prohibitions that are broader than those in chapter 42.23 RCW. Also, keep in mind that a municipal officer with authority over the making of the contract may not simply delegate that authority to another officer and then enter into the contract.

Because there is not contract at issue in the Class 2 permit application process, the provisions in RCW 42.23.030 are inapplicable. The City Administrator's lease agreement for rental of a residential unit from the applicant is not such a contractual issue. The City Administrator has no interest in the applicant's business or in any other business endeavor of the applicant.

Even if there were a contract at issue (a lease agreement), the City Administrator's status as a lessee of the applicant would not be a sufficient basis to serve as a conflict. MRSC explains:

What is a Remote Interest?

Under RCW 42.23.040, certain contract interests are considered acceptable "remote interests," regardless of the dollar amount. A "remote interest" is:

- *That of a nonsalaried officer of a nonprofit corporation;*
- *That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;*
- *<u>That of a landlord or tenant of a contracting party</u>; [or]*
- *That of a holder of less than 1% of the shares of a corporation or cooperative which is a contracting party.*

In summary, there is no Appearance of Fairness issues associated with the City Administrator's decision on the Torkelson Class 2 permit application. The Appearance of Fairness Doctrine only applies to quasi-judicial hearings. The City Administrator did not conduct a hearing. Further, because the Doctrine does not apply, the City Administrator is free to communicate with anyone he so desires when making his decision, and he is not bound by rules applicable to ex parte communications. There is also no cognizable conflict in this matter. The City Administrator does not have a pecuniary or contract interest in the outcome of the Torkelson Class 2 review, and, therefore, does not have a conflict.