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3 For assessment of consistency, but *not* because the comprehensive plan is a regulatory
4 document, it is appropriate to consider the Torkelson proposal in light of the comprehensive
5 plan's text.

6 **1. The Future Land Use element.**

7
8 The proposal fits within the plan's Future Land Use element density limit of "up to 12
9 dwelling units per gross acre" for Moderate Density Residential-designated sites. *Id.* at 35. The
10 proposal is also harmonious with the intent of the Moderate Density Residential designation
11 because it is based on townhouse or condominium-style dwellings. The comprehensive plan
12 further states that the limit of "maximum permissible density and zoning standards will regulate
13 development to assure compatibility." *Id.*

14
15 Before considering other sections of the comprehensive plan, it should be noted that the
16 plan's text for even Low Density Residential promotes a "mix of housing types including single-
17 family, duplexes, townhouses, and multi-family dwellings" while capping such premises at a
18 density of 5 dwelling units per gross acre. *Id.* By contrast, High Density Residential is unlike
19 both other residential categories because it is intended to support the primary use of multi-family
20 dwellings. *Id.*

21
22 Nothing in the Future Land Use element of the comprehensive plan can be viewed as
23 conflicting with the Torkelson proposal. Hard and fast criteria that might indicate the presence
24 of a conflict are not to be found in the comprehensive plan's discussion of this topic. The Future
25 Land Use element contemplates that "single family homes may be on large lots or small lots."
26 *Id.* at 33. An overall emphasis of this element is on a strong need for additional acreage for
27 single family residential sites "developable at urban level densities." *See id.* at 33 and Table 3-4
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3 (stating a higher need for additional single family residential than any other land use category).

4 The specific means of accomplishing this goal are not dictated by the comprehensive plan,
5 although the above-quoted statements of the different residential land use categories should be
6 used as the “framework” for land use and zoning. *Id.* at 34.
7

8 **2. The Housing element.**

9 Separate from the Land Use element, the comprehensive plan contains a Housing
10 element. *Id.* at Ch. 4. The prefatory remarks to the Housing element give no suggestion that it is
11 intended to guide land use planning or permitting decisions. *Id.* at 39. Instead, the Housing
12 element is apparently intended as an inventory of existing and needed housing types. The
13 Housing element is a required comprehensive plan element under the Growth Management Act
14 (“GMA”). *See* RCW 36.70A.070(2). The Housing element refers the reader to the Land Use
15 element for basic information on needs for different types of housing stock. *Id.* at 41.
16

17 This section of the comprehensive plan stems from a different section of the GMA, which
18 requires cities and counties to encourage the availability of affordable housing. RCW
19 36.70A.020(4). Neither this section of the GMA nor this element of the comprehensive plan
20 purports to be even a rough guide for land use compatibility review or other site-specific
21 decisionmaking. Unsurprisingly, the language in this section of the comprehensive plan is
22 aspirational. This section is focused on such topics as state and local financing strategies as well
23 as suggestions encouraging the City to “re-evaluate development regulations, permit procedures,
24 and funding decisions....” *Id.* at 41.
25

26 **3. The Goals and Policies.**
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3 The comprehensive plan also contains a statement of goals and policies. Few of the Land
4 Use and Growth Management Policies have any directly regulatory bearing on the present issue.
5 *Id.* at 9-12. They are expressed in terms of general guidance. In any event, there are no conflicts
6 between the Torkelson proposal and any of the policies.
7

8 The comprehensive plan's Housing Policies include the following statements:

9 *Goal: Encourage the availability of affordable housing to all economic segments*
10 *of the population, promote a variety of residential densities and housing types,*
11 *and encourage preservation of existing housing stock.*

12 The Torkelson proposal meets a demonstrated market need for housing. The housing
13 units are suitable for renting but also may be sold at affordable prices. They provide an
14 alternative form of home ownership attractive to persons who may not wish to have the upkeep
15 of a yard or extensive acreage. They represent an element of Selah's housing stock at a different
16 density from standard detached single family units on larger lots. But there is no evidence
17 whatsoever that they damage the preservation of existing housing stock.

18 *Policy HSG 1.2 Encourage new single-family development throughout existing*
19 *single-family neighborhoods as redevelopment and infill construction at*
20 *appropriate densities.*

21 A key GMA goal is the wise utilization of infill development opportunities rather than the
22 consumption of land farther from urban centers. The Torkelson proposal is located within close
23 proximity to schools, parks, restaurants and other retail opportunities. The proposal is within
24 walking distance of Selah's city center. Use of R-2 density at this site is consistent with the
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3 comprehensive plan. The creation of individual lots has no bearing on plan consistency one way
4 or another.¹

5 *Policy HSG 2.1. Encourage combined net density of all residential developments*
6 *to remain at present levels. Exceptions to this policy should be permitted where*
7 *the developer can demonstrate that the quality of the project design, construction*
8 *and amenities warrants a different housing density.*

9 No current residential development will have its net density changed by the proposal
10 except pursuant to the revision of the land use designation made in prior planning processes.
11 The proposal is neutral as to this policy statement and no “exception” to this policy is required.
12 In this sense, the former single family detached residence and open-sided agricultural building
13 noted in the staff report (at p. 2) is the land use which is inconsistent with the comprehensive
14 plan. An incoherent application of this policy would never allow an increase in density of any
15 residential site. Such an interpretation should be rejected.

16 Even if the non-mandatory term “encourage” in the preceding policy is given a
17 mandatory interpretation (which would be unsupportable) an exception should be made because
18 Torkelson has an extensive track record in Selah of building projects that have met a strong
19 market-supported need. To deny approval of this proposal because of this policy would be to
20 reject the uncontradicted evidence that Torkelson’s projects have been successfully integrated
21 into Selah’s housing stock in many locations similar to the present. Because of this prior
22 experience, and because of the consistency of the key design elements with this proposal, there is
23 evidence that the features proposed by this project are acceptable. This is even more true
24 because this policy speaks of “density,” which has *already* been established as up to 12 units per
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28 ¹ Note also that the PD zoning text does not state a minimum lot size.

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3 gross acre due to the underlying zoning district and comprehensive plan designation. Planning
4 choices, once made, cannot later support project permit denial when the project permit is
5 consistent with the underlying planning choice. It is not proper to use the permitting process as a
6 comprehensive planning process. RCW 36.70A.140(1)(a).
7

8 *Objective HSG 3. Minimize the negative impacts of medium- and high-density*
9 *residential projects on adjacent low-density residential areas, but encourage*
10 *mixed use/density projects.*

11 In typical fashion for comprehensive plan text, this objective is stated in suggestive rather
12 than mandatory terms. By fostering the density permitted by the comprehensive plan and the
13 zoning district, a mixture of density in the vicinity is met. The creation of individual lots also
14 represents a diversification of use. Neither has been shown to impose any negative impact on
15 low-density residential areas.

16 *Policy HSG 3.1. Encourage multi-family dwellings to locate in areas where*
17 *increased density can be used as a tool to discourage urban sprawl.*

18 While the Torkelson proposal is not multi-family, it nevertheless meets the basic point of
19 this policy because it meets the underlying density expectations for this site. As such, it helps
20 create a more compact residential settlement pattern in walking distance to various amenities. It
21 is therefore an implementation of the policy's sprawl-reduction aim.

22 *Policy HSG 4.1 Encourage developers to use private covenants and deed*
23 *restrictions which specify architectural, maintenance and landscaping standards*
24 *within their development.*

25 This policy is met. The proposal's covenants have now been used for several similar
26 projects elsewhere in Selah with no difficulty.
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3 In summary, the comprehensive plan text endorses variety in housing types, with a
4 special emphasis on varying density levels within defined thresholds. The main purpose,
5 consistent with GMA generally, is to foster urban land use patterns that focus development
6 where urban services exist or can be readily provided. Infill development, mixes of residential
7 density, and opportunities for home ownership at moderate purchase prices, are all hallmark
8 GMA topics. All are met by this proposal.²
9

10 The comprehensive plan text does not place these values above preserving a degree of
11 harmonious compatibility with existing residential areas. But the point of the comprehensive
12 plan and the land use development regulations is to apportion development rights in a manner
13 that helps implement the overall “vision” of the plan. Where density standards are not exceeded,
14 and where a particular housing type has been successfully implemented throughout Selah, there
15 is no basis to find a clash with the comprehensive plan sufficient to support denial. To do so
16 would be to read into the comprehensive plan a point of conflict where none exists. Nothing in
17 the plan prohibits the creation of individual lots at the proposal’s density and no evidence
18 indicates that the creation of individual lots is itself a source of incompatibility. The proposal
19 should be deemed consistent with the comprehensive plan.
20
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22 The Torkelson proposal does not claim conformance with the comprehensive plan solely
23 on the basis of the density threshold. Instead, the proposal makes suitable provision for: 1) open
24 space adequacy and protection; 2) clear specifications for elevations, building heights, and
25 exterior appearance of buildings and structures; 3) suitable location, height, and materials for
26 walls, fences, and screens; 4) statement of the goals and public interest served; and 5) detailed
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28 ² The urbanizing trends of this portion of the City were astutely noted in the staff report at p. 13.

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3 restrictive covenants, other than those relating to retention and maintenance of common open
4 space.

5 To reiterate: "...a comprehensive plan is a guide and not a document designed for
6 making specific land use decisions...." *Citizens for Mount Vernon*, 133 Wn.2d at 873.

7
8 Despite the foregoing, it may still be argued that doubts about the proposal's consistency
9 with the comprehensive plan should be resolved against the proposal. Because of this possible
10 claim it is necessary to consider the PD zoning text in more detail.

11 **E. Application of the PD zoning regulations and the burden of proof.**

12 In any instance where a zoning code permits a particular use, that use should be allowed.
13
14 *Id.* In this case, the PD zoning text is a means to vary the underlying dimensional and other
15 terms of Selah's development regulations (zoning and subdivision), so long as conformance with
16 the policies of the comprehensive plan can be shown. SMC 10.24.010; *see also* SMC
17 10.24.060(1) ("substantial conformance" with the comprehensive plan). In the absence of any
18 comprehensive plan text prohibiting individual lot creation, and the express furtherance of the
19 plan's density limit and its more general GMA-based functions, the proposal should be
20 approved.
21

22 This result is also required by a consideration of the structure of the PD zoning ordinance.
23 As discussed above, the City has allowed and in some respects deliberately expanded the
24 availability of the PD zone to foster flexibility in residential developments. The PD zoning
25 ordinance at SMC 10.24.010 does not state or define specific requirements that must be met in
26 order to avoid denial. When a local government provides only a general standard in a land use
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3 ordinance, the burden falls to the government to show that the standard has not been satisfied.

4 *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 896 (1995).

5 It is inimical to fair play and due process for case-by-case analysis of inherently vague
6 standards like "compatibility" to be used as grounds for denial where clear standards are lacking
7 and where a project otherwise is consistent with the stated text of the regulation. *Lakeside Indus.*
8 *v. Thurston County*, 119 Wn. App. 886, 898, 83 P.3d 433 (2004) ("The County's case-by-case
9 argument is simply another way of allowing it to reject a specifically allowed use...by invoking
10 the general purpose statement underlying the sub-area plan. And again, a case-by-case approval
11 procedure would provide no fixed standards for an applicant or a reviewing court."). The court
12 in *Lakeside Indus.* recognized the holding of *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43,
13 873 P.2d 498 (1994), under which comprehensive plans may be given regulatory effect when
14 expressly adopted as such by development regulations. But the *Lakeside Indus.* court found this
15 rule inapplicable where a comprehensive plan contained only broad statements and no express
16 prohibitions, while the zoning code allowed the use.

17
18
19 As illustrated by recent proposals for an entirely new PD zoning ordinance in Selah, it is
20 not impossible to define aesthetic considerations. Likewise, view protection overlays/corridors
21 are a recognized form of development regulation. But guidelines that provide only very general
22 standards of what is to be done, even when met with procedural safeguards to control arbitrary
23 administration, have been deemed impermissible because they, once again, create ad hoc case-
24 by-case policy making. *Anderson v. Issaquah*, 70 Wn. App. 64, 79, 851 P.2d 744 (1993). The
25 absence of ascertainable criteria is not saved by procedural safeguards. *Anderson*, 70 Wn. App.
26 at 81.
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3 **F. Miscellaneous rebuttal points.**

4 Criticism of the proposal has been raised based on alleged errors in the original
5 application materials. However, no person has demonstrated how any such errors have led to
6 prejudice. The City staff report does not support the view that there has been any
7 incompleteness of any application or any other impropriety in the application process.
8

9 An argument has been raised that the proposal's subdivision request is improper because
10 of prior subdivision activity at this site. But SMC 10.50.019 does not prohibit additional
11 subdivision activity so long as there has been prior submission and approval of a final plat. There
12 is no evidence that this standard has not been met here.

13 Changed circumstances sometimes are required by rezone applications. The requirement
14 that a rezone be supported by a change in circumstances is dispensed with entirely where a
15 rezone will implement policies of the relevant comprehensive plan. *Henderson v. Kittitas*
16 *County*, 124 Wn. App. 747, 754, 100 P.3d 842 (2004) (citing *Bjarnson v. Kitsap County*, 78 Wn.
17 App. 840, 846, 899 P.2d 1290 (1995)). This proposal implements the comprehensive plan by
18 developing appropriate density residential housing units on a moderate density residential site.
19 The developer's experience with similar projects throughout Selah demonstrates a public need,
20 as does the text of the comprehensive plan regarding additional acreage requirements for single
21 family residential development. *See City of Selah Comprehensive Plan at Table 3-4, p. 33.*
22 There is no need to show a change in circumstances. Even if this requirement is imposed,
23 Washington law takes a liberal view of the extent of change required, and changes on the
24 property (such as the annexation of the site) or in the general area (ditto) would suffice. *Bassani*
25 *v. Yakima County*, 70 Wn. App. 389, 394, 853 P.2d 945 (1993).
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3 **III. SUMMARY AND CONCLUSION**

4 This Hearing Examiner has previously found that “[d]iffering intensities of residential
5 use do not raise issues of incompatibility in and of themselves.” See Hearing Examiner
6 Recommendation dated June 21, 2005, City of Selah File Nos. 912.79.05-1, 914.79.05-1, at p. 10
7 (Exhibit M).
8

9 Stated neighborhood opposition in this case centers on architectural style and view
10 obstruction. Neither has been regulated by the City of Selah and neither can support a finding of
11 incompatibility. Insinuations of neighborhood opposition include bias against the heightened use
12 of this property due to the density of the development. But the density is allowed by the zoning
13 district and the comprehensive plan land use designation. Other concerns, such as those that
14 might present issues of compliance with cognizable environmental impacts, have been waived by
15 the absence of a SEPA appeal. Even allowing for such claims, there is no evidence of error in
16 the MDNS.
17

18 For the foregoing reasons, Torkelson requests that the applications be approved.

19 DATED THIS 30th day of July, 2015.

20
21 
22

23 KENNETH W. HARPER

24 WSBA #25578

25 *Attorneys for Torkelson Construction, Inc.*
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27
28

Exhibit A



CITY OF SELAH

Public Works Department

222 South Rushmore Road

SELAH, WASHINGTON 98942

Phone 509-698-7365

Fax 509-698-7372

April 6, 2015

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

RE: SEPA Review for Whispering Views; File No. 971.45.14-01

Dear Mr. Torkelson:

We have reviewed the environmental checklist for the "Whispering Views" planned development and preliminary plat, along with comment letters received for the Notice of Application and relevant information from the Bowers short plat and variance decision. We have identified several areas of concern with respect to this project and have determined that we do not have sufficient information to support a negative threshold SEPA determination. We are requesting the following information as provided for by SEPA:

1. Preparation of a traffic impact analysis by a licensed professional engineer qualified to make such studies to evaluate project related traffic impacts on E. Goodlander Road including the intersections with 1st Street, Lancaster and Wenas Roads. The City will provide traffic counts for this purpose.
2. A traffic or engineering analysis of the adequacy of the proposed private roads, approved by a variance for the development of up to 16 two-family residential units, to accommodate traffic generated by 48 single or multiple-family residential units. Specific concerns include:
 - a. Overall suitability of a private road designed to fire apparatus road standards to accommodate traffic generated by 48 residential units.
 - b. Lack of or insufficient overflow and visitor parking
 - c. Lack of pedestrian facilities.
 - d. It appears that the street in the southeast part of the site would exceed ten percent due to steep slopes in that location.

This request is being made under SEPA (WAC 197-11-335). No additional action will be taken until the traffic impact analysis and other requested information has been received, reviewed and accepted by the City. The hearing scheduled for April 20 is being postponed to allow for completion of this action.

Sincerely,

Joe Henne

Interim City Administrator/SEPA Responsible Official

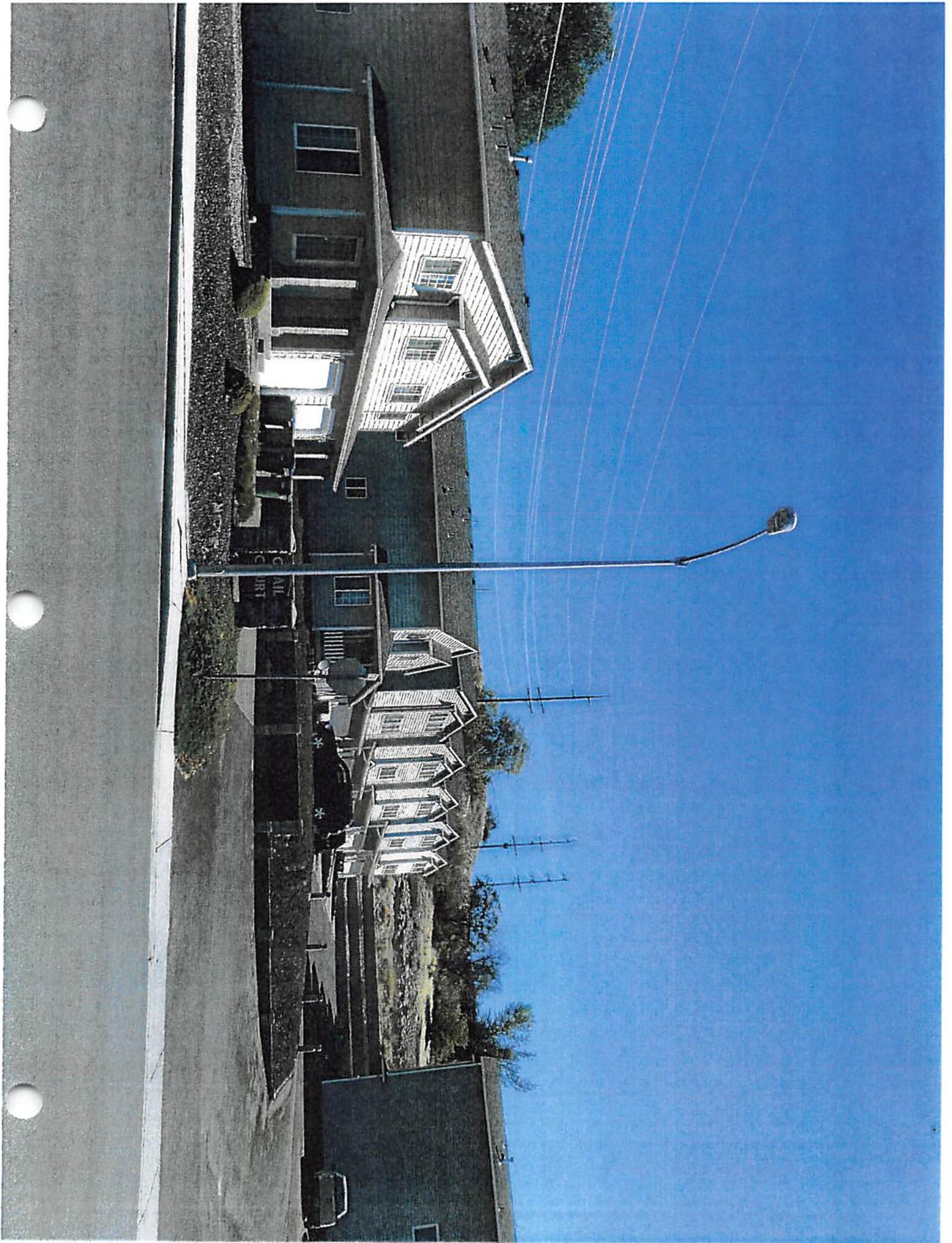


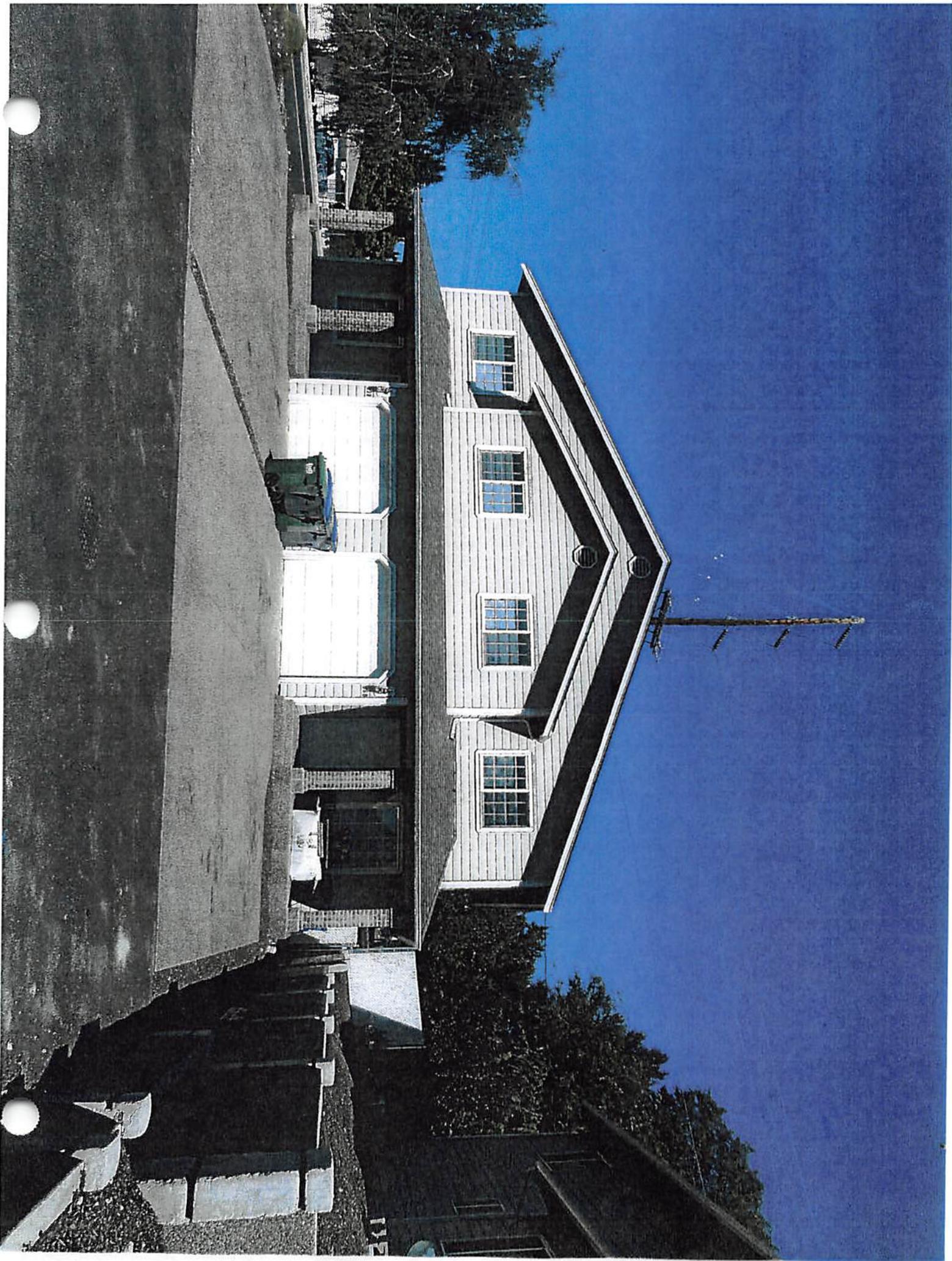
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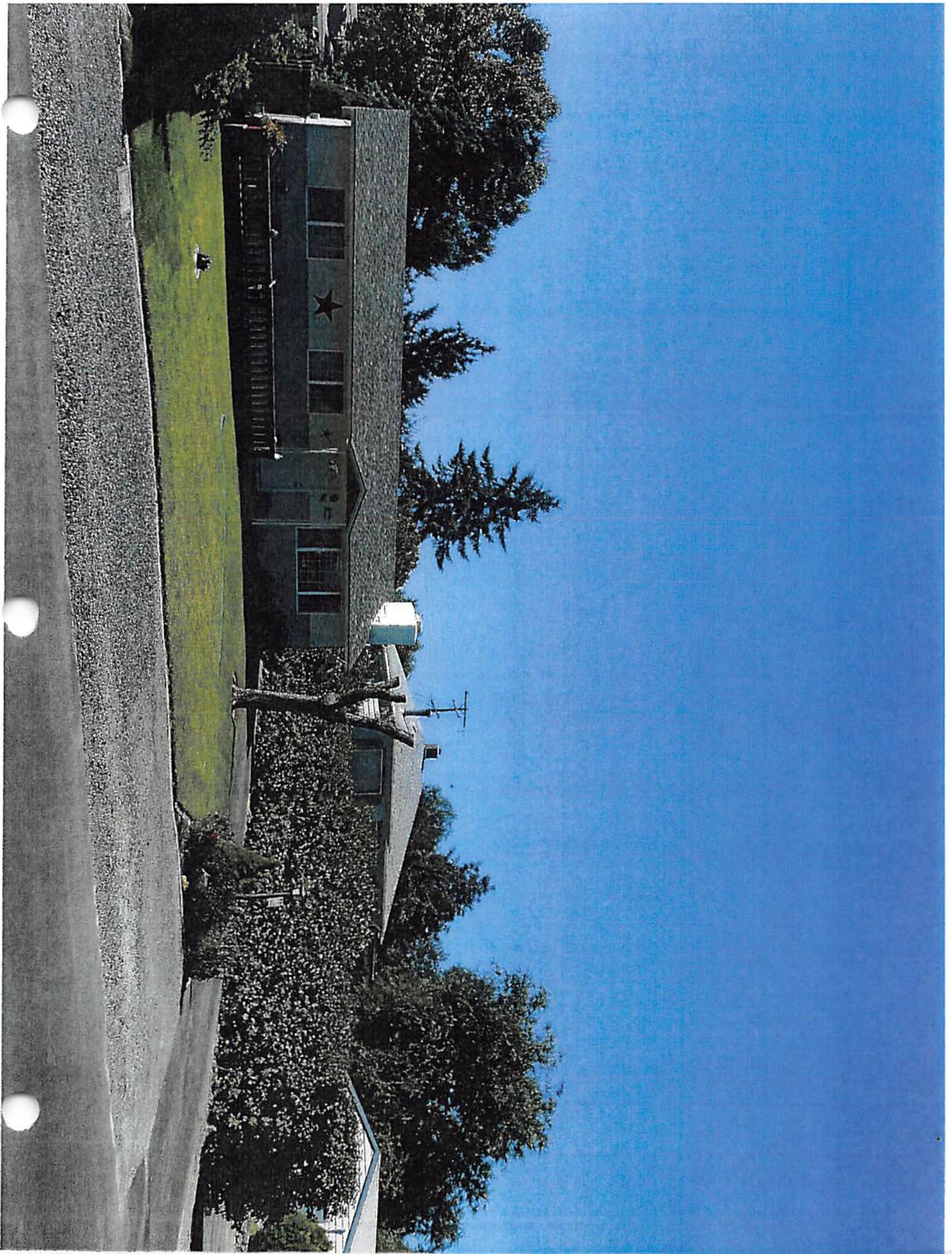
Quail Court Estates

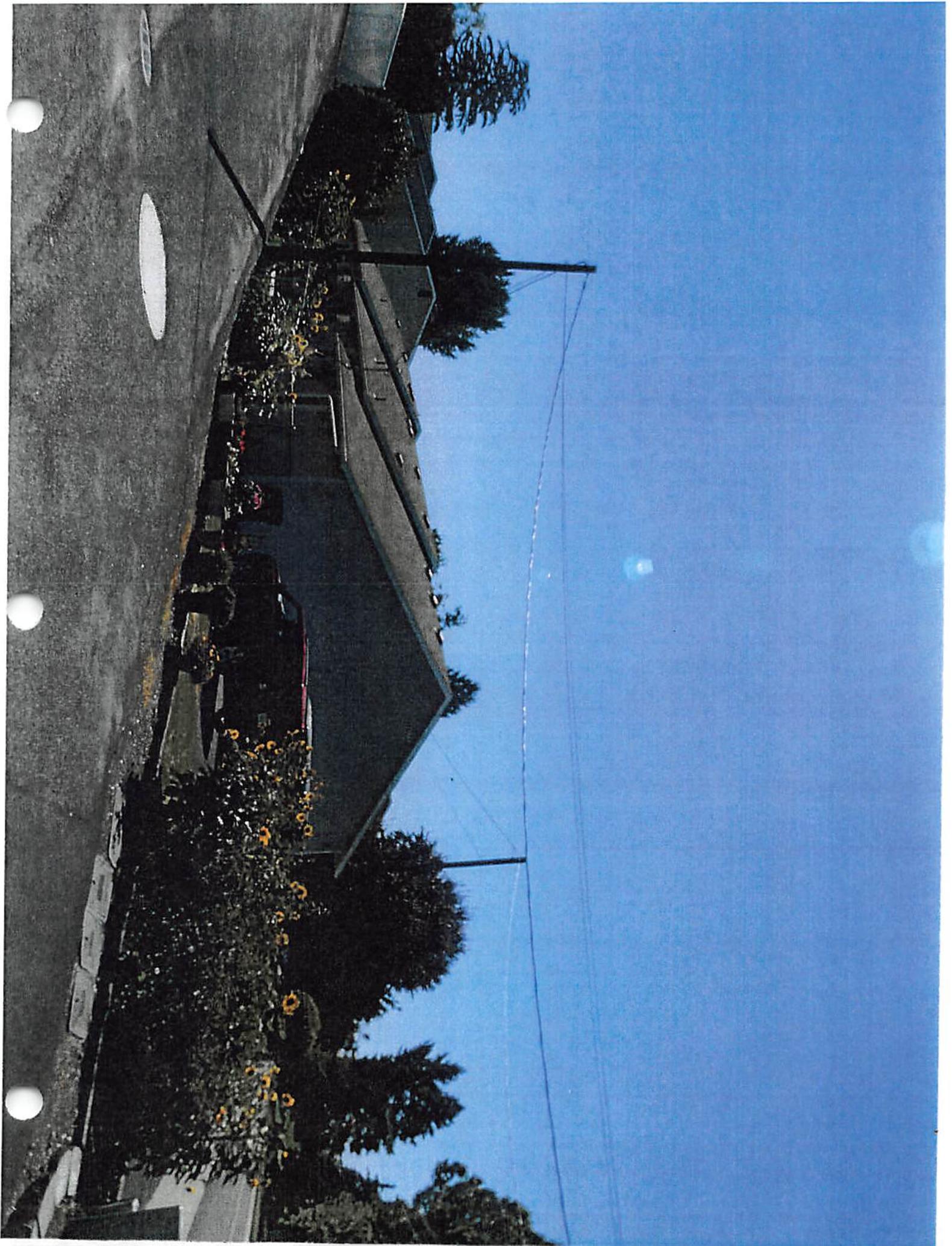
Built 2004

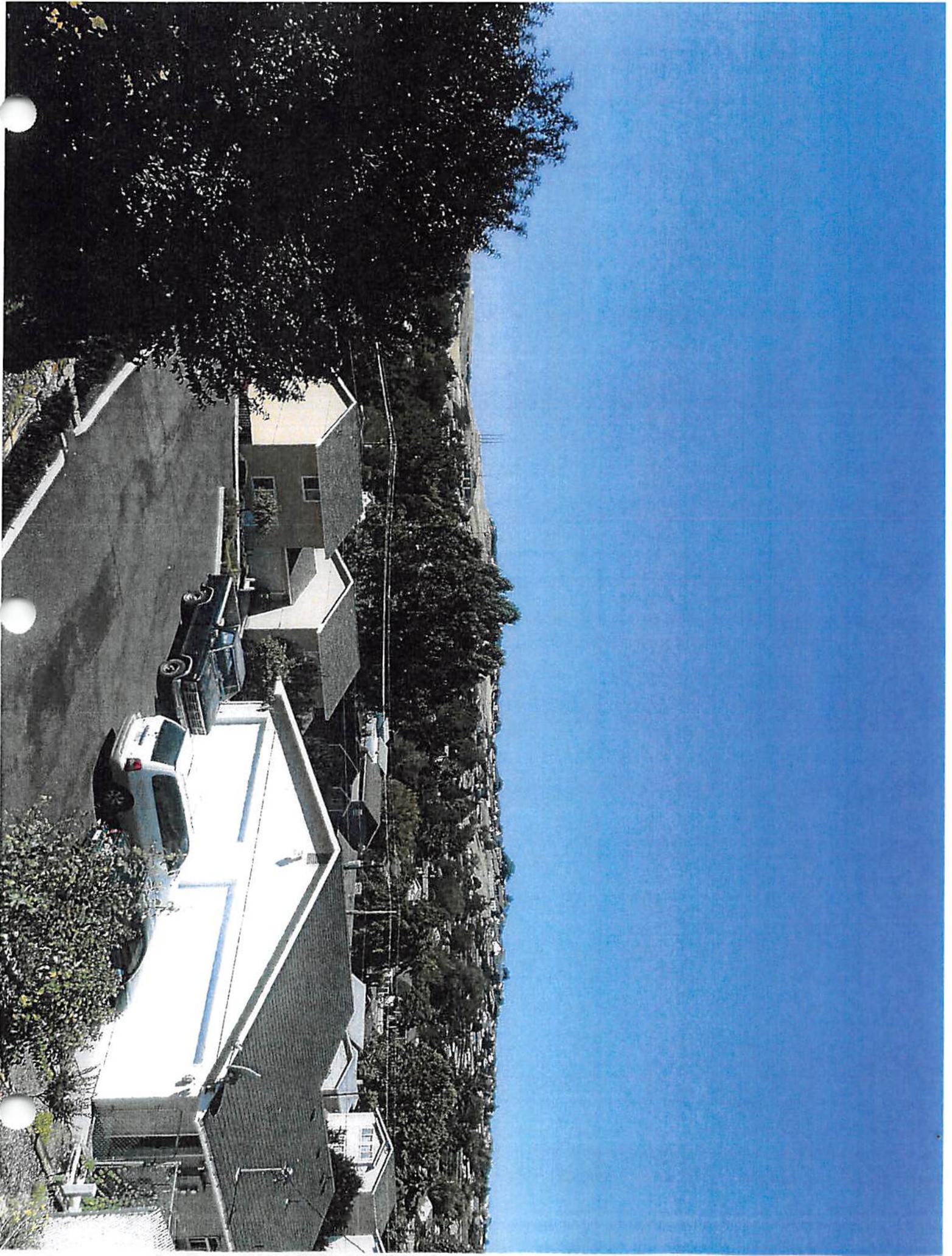
699 Quail Court









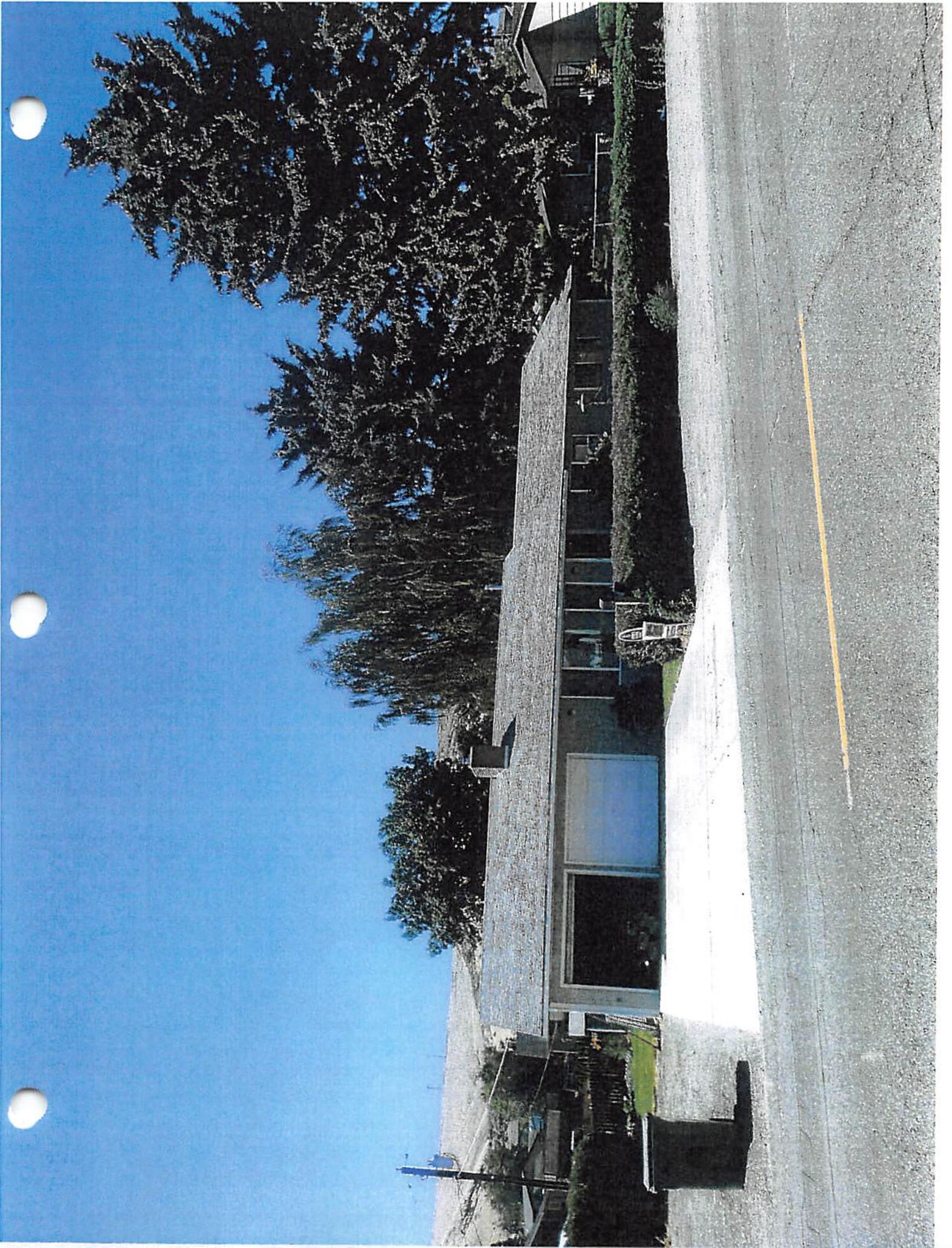


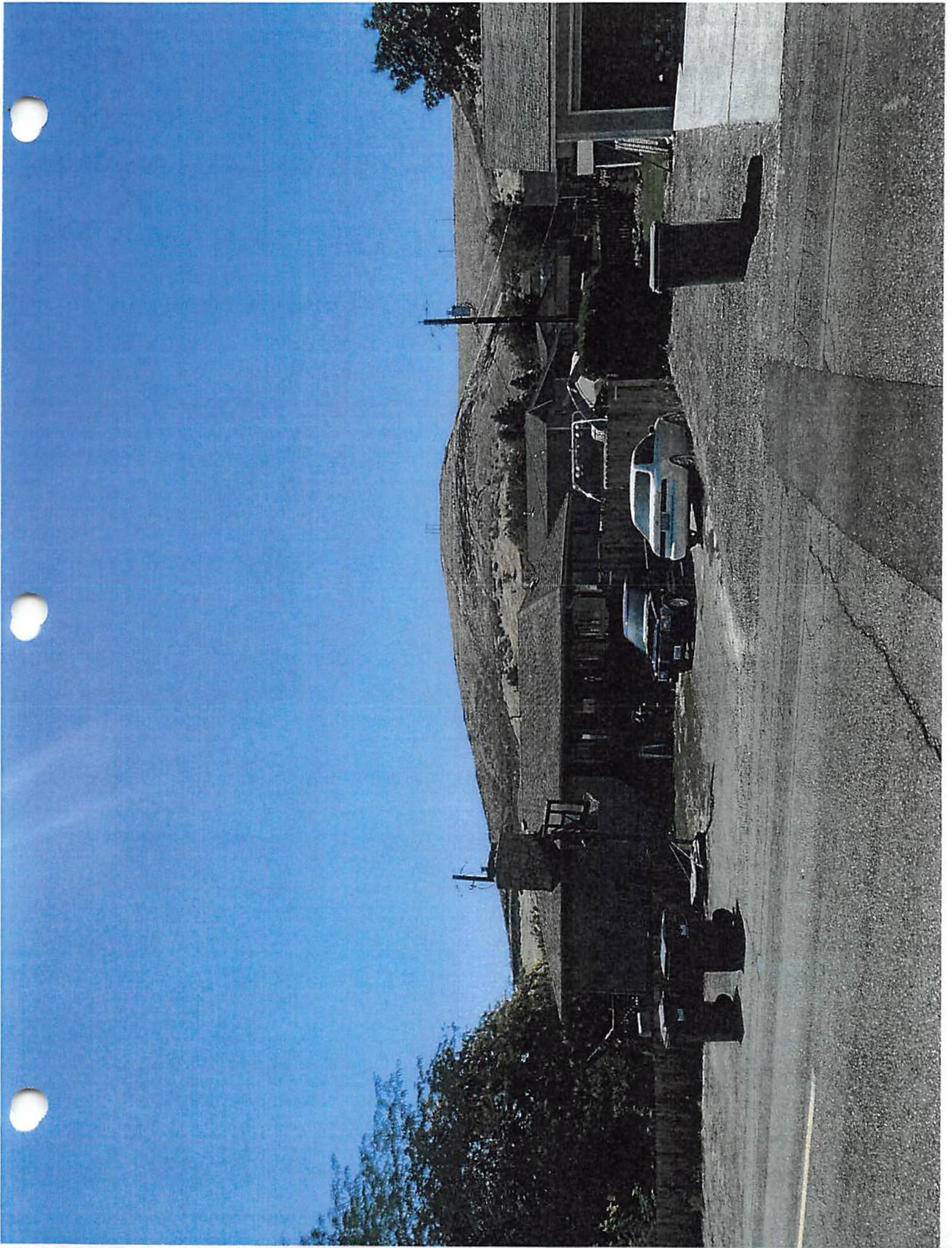
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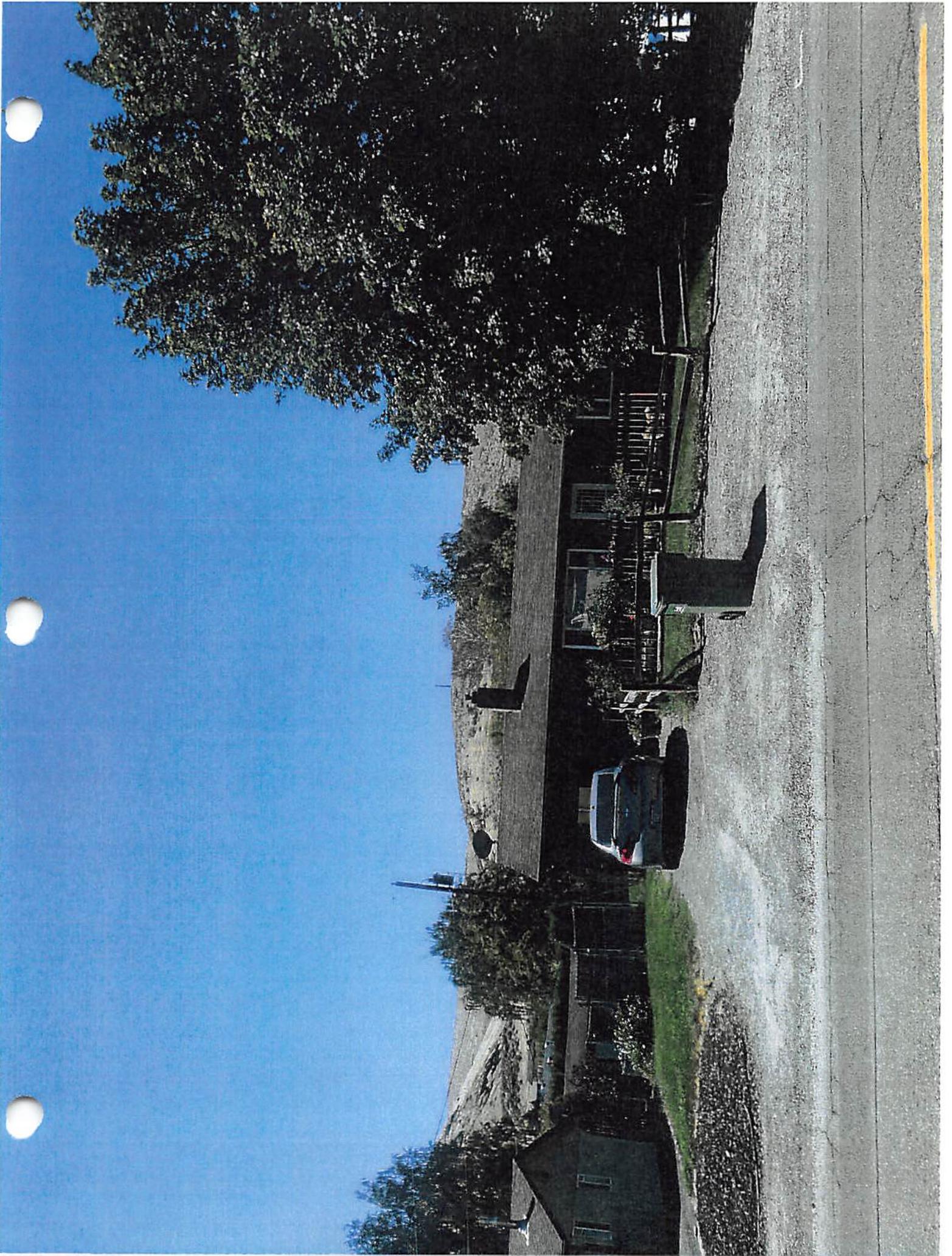
Built 2009

605 Southern











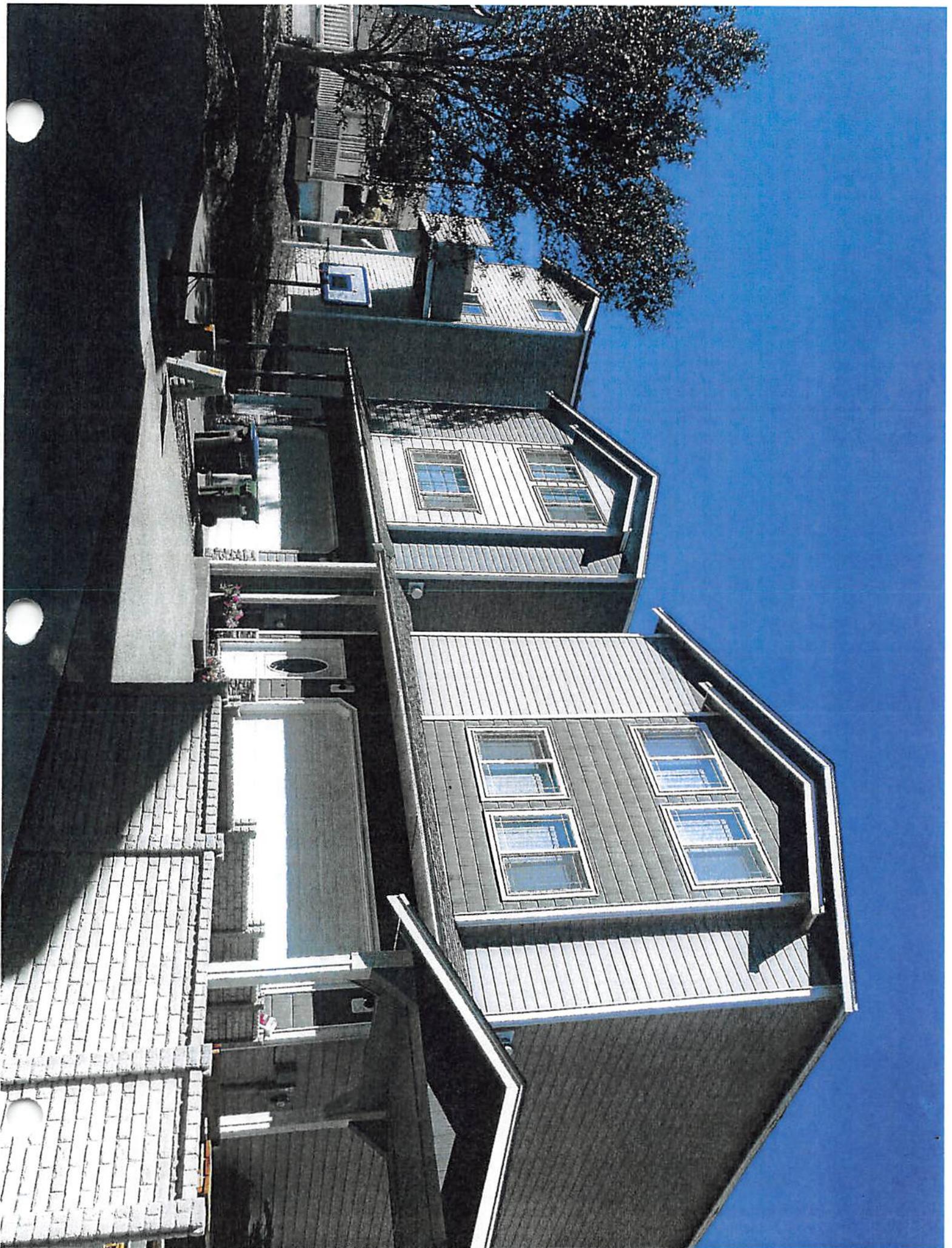


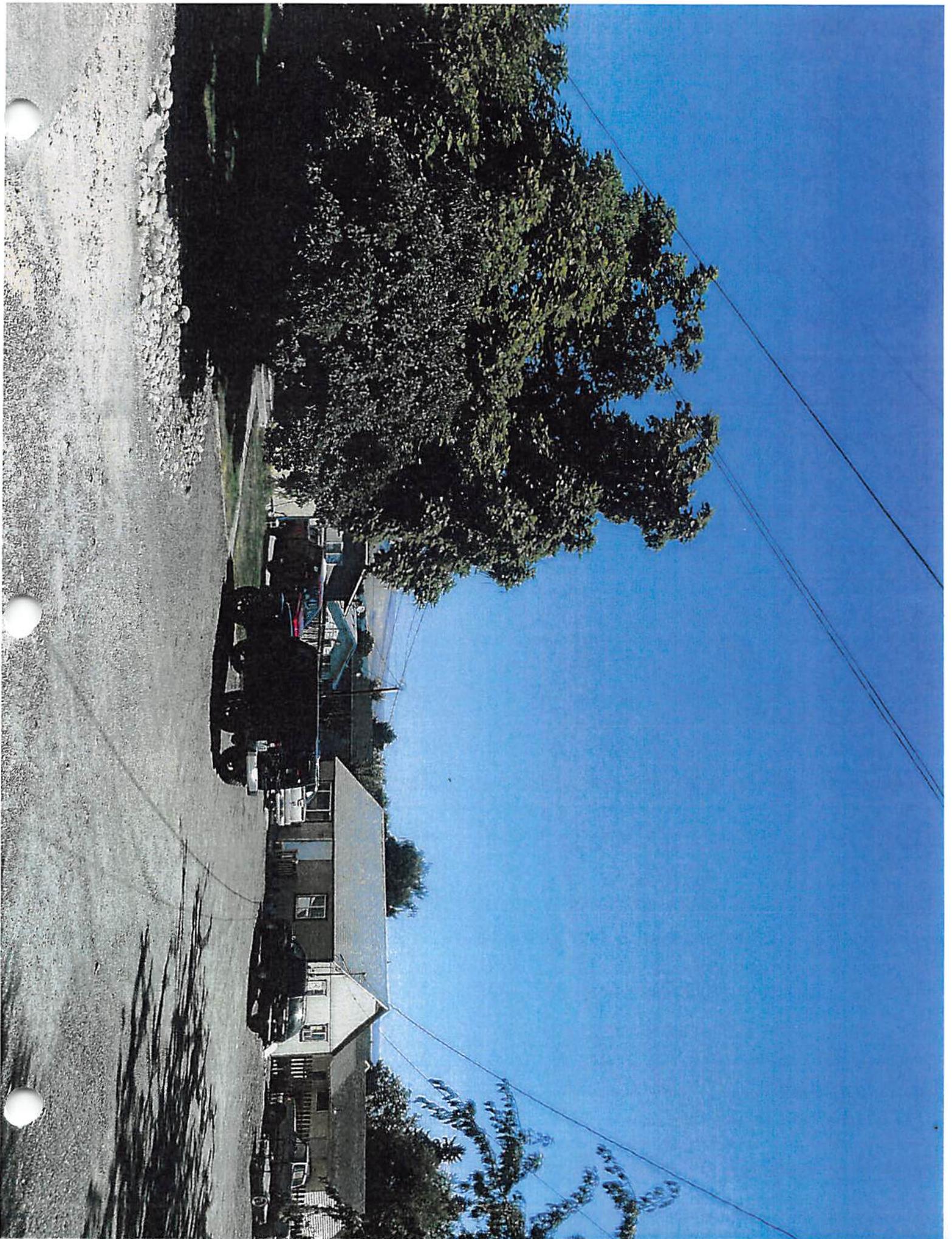
5th Street Estates

Built 2011

614 S. 5th Street





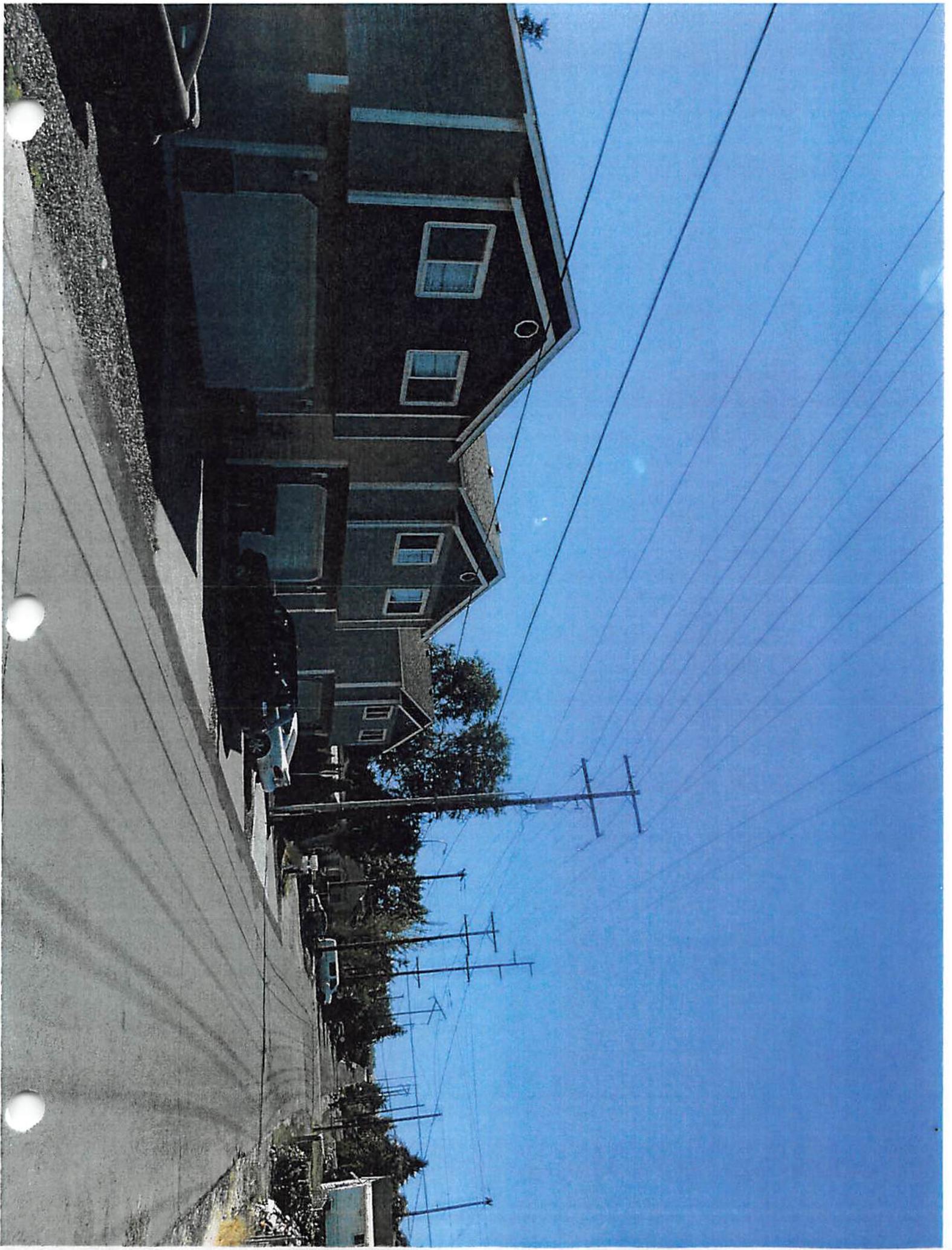


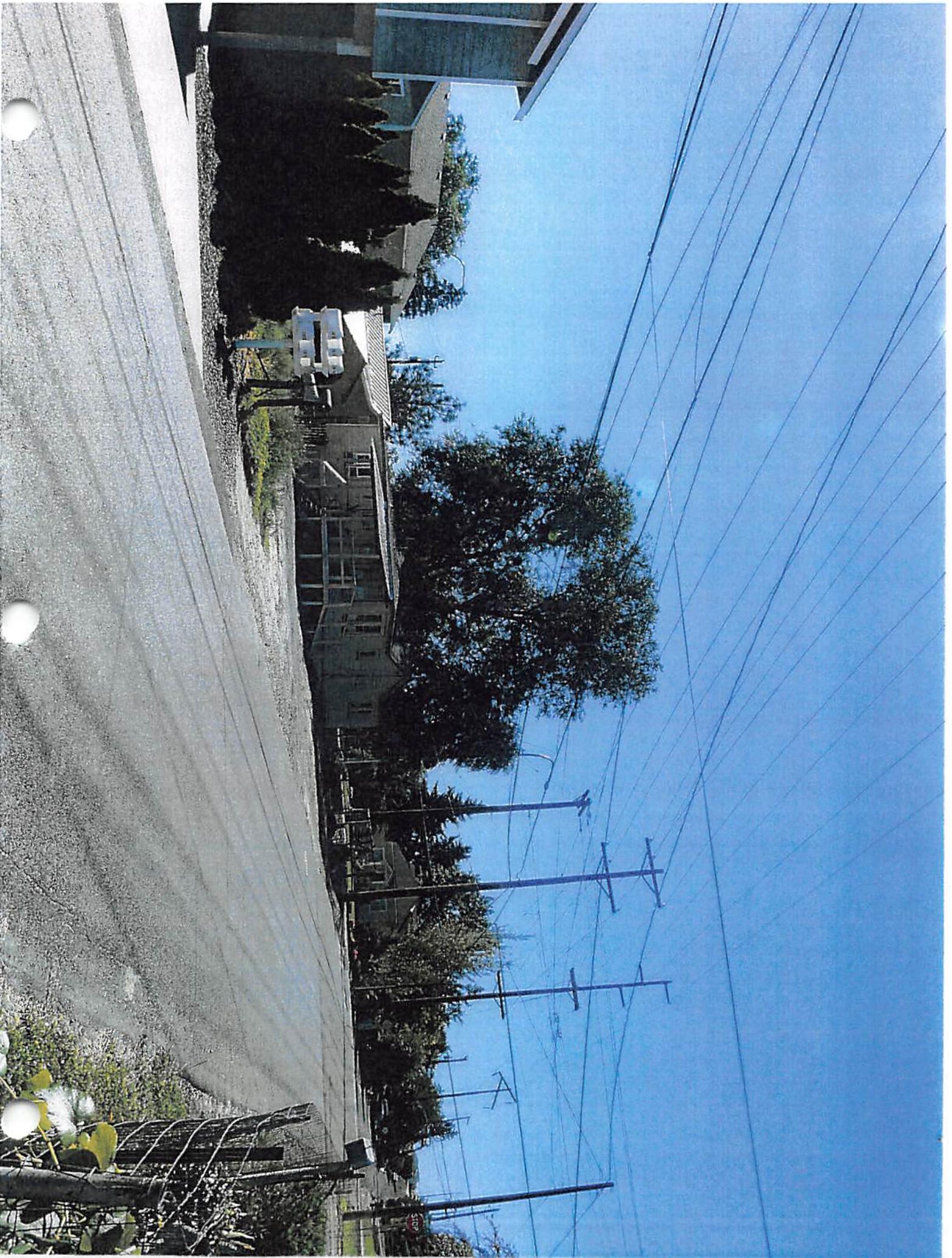


Sunset Villa

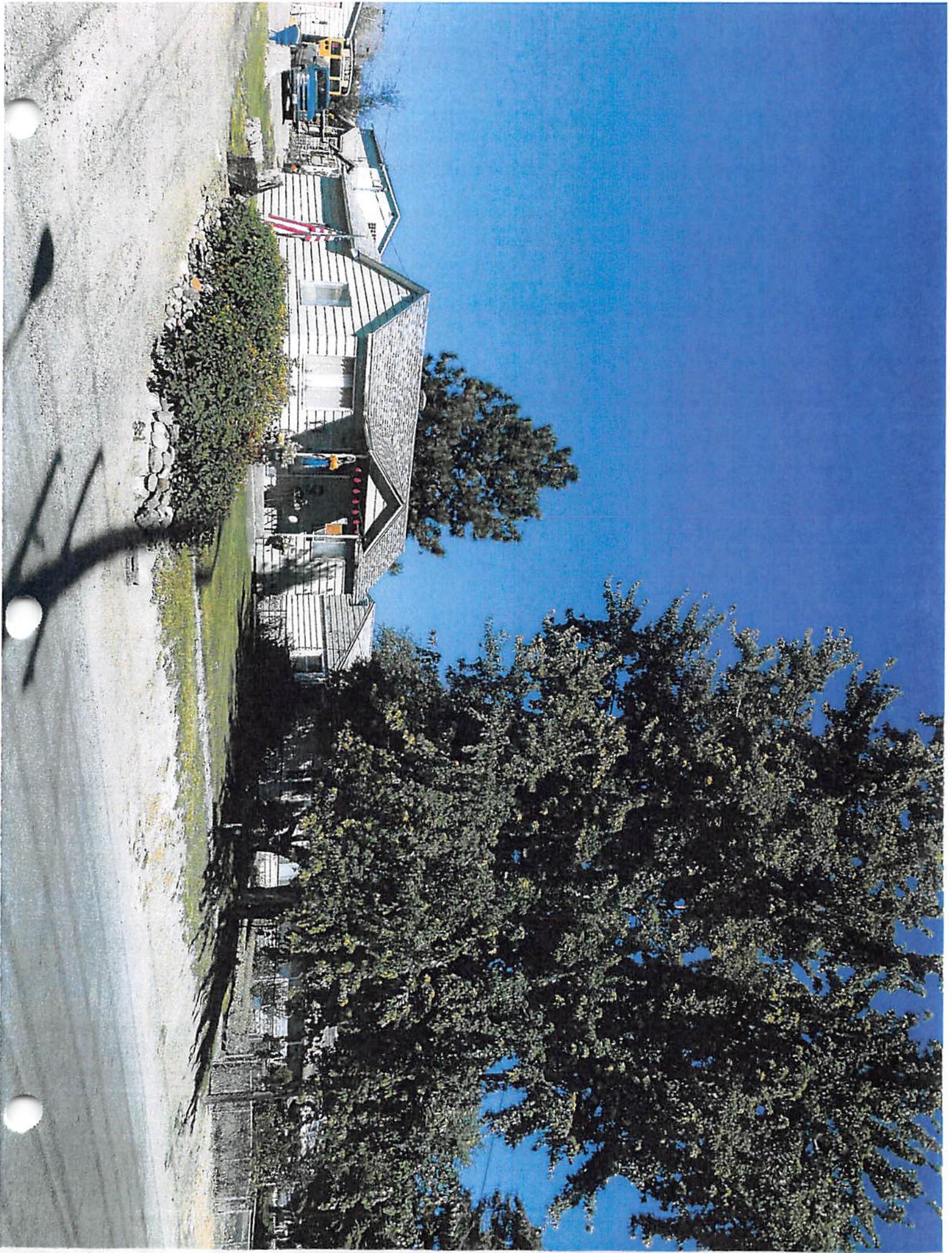
Built 2011

207 N. 10th Street





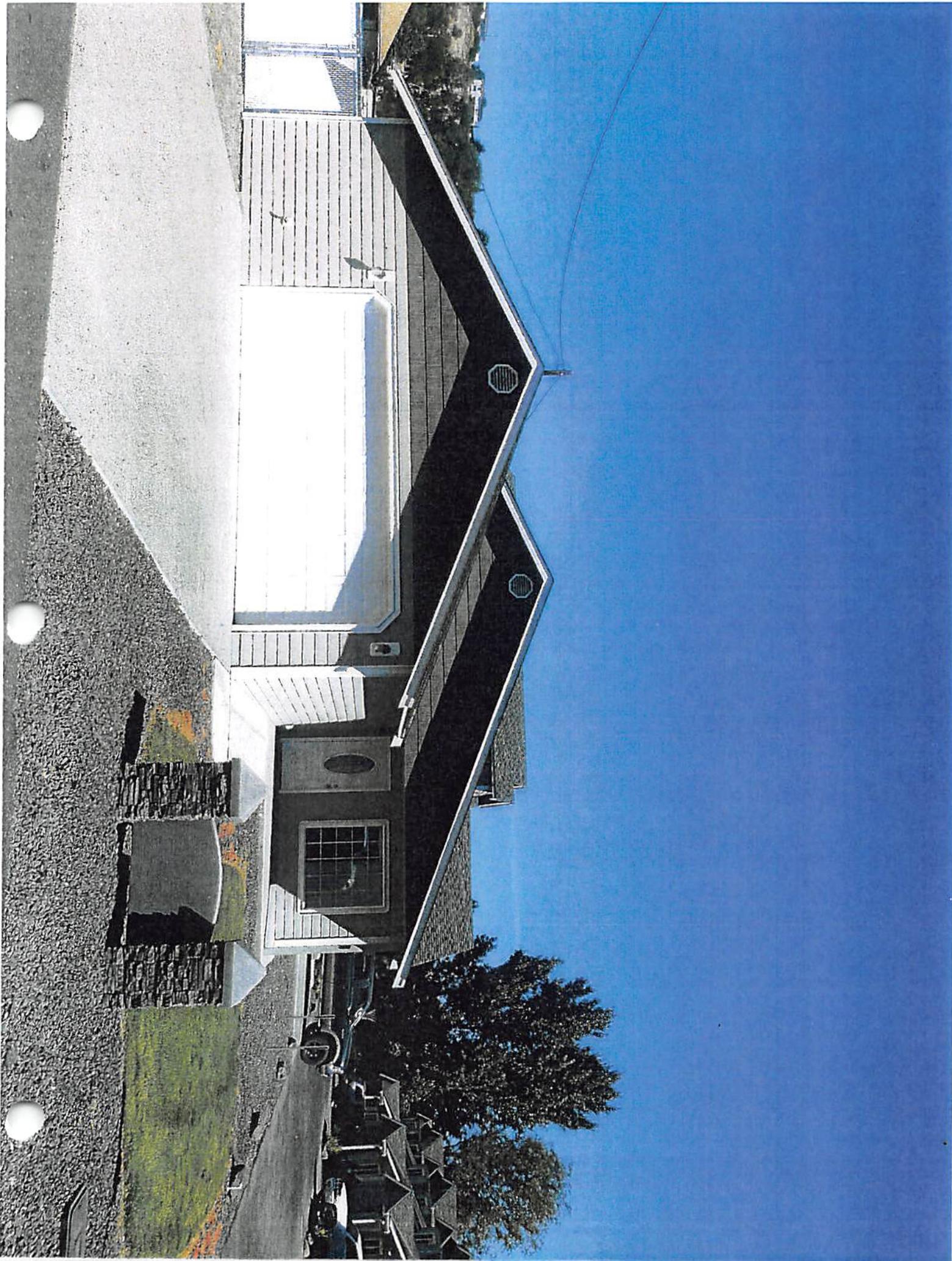


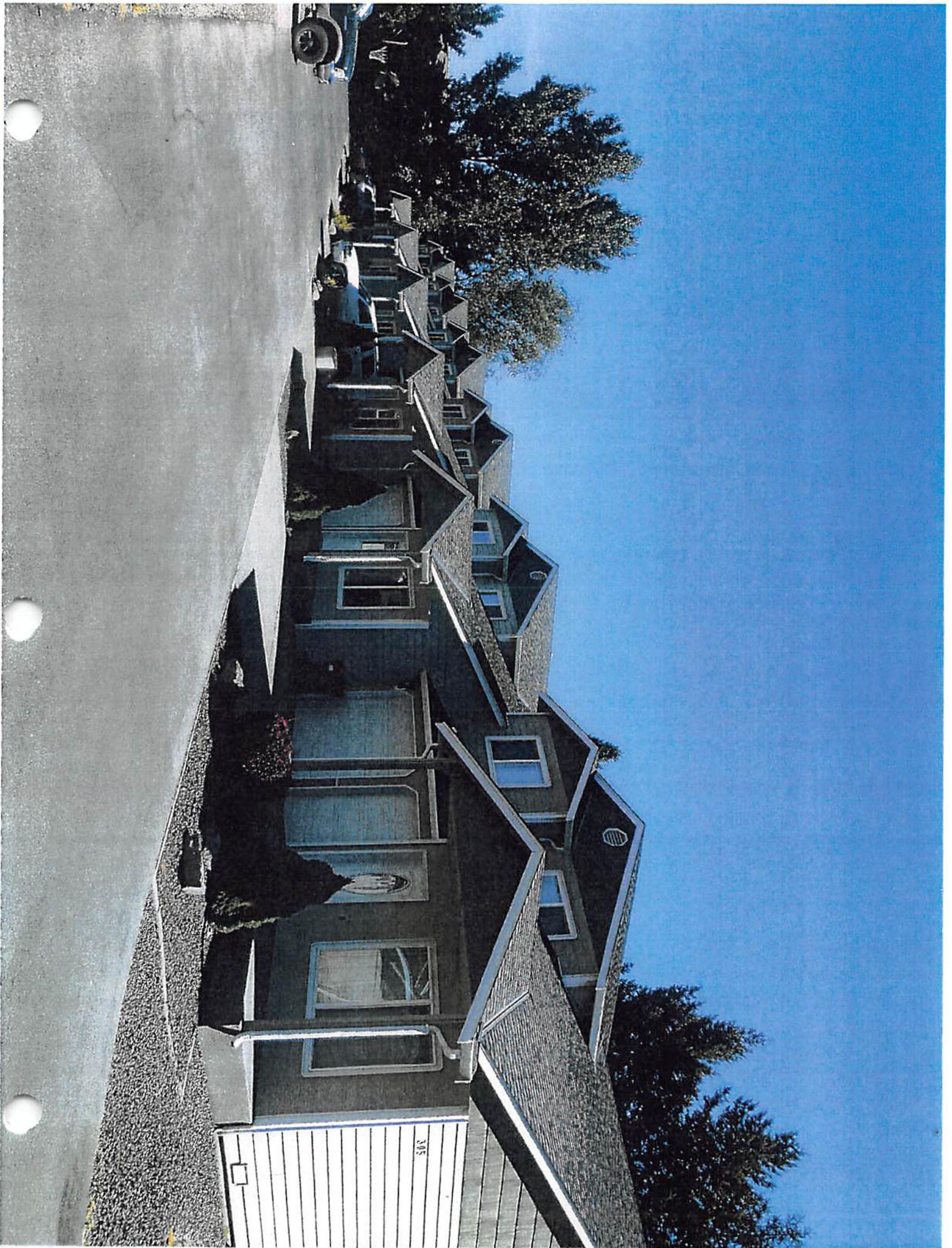


Riverview Manor

Built 2012

307 Riverview





305

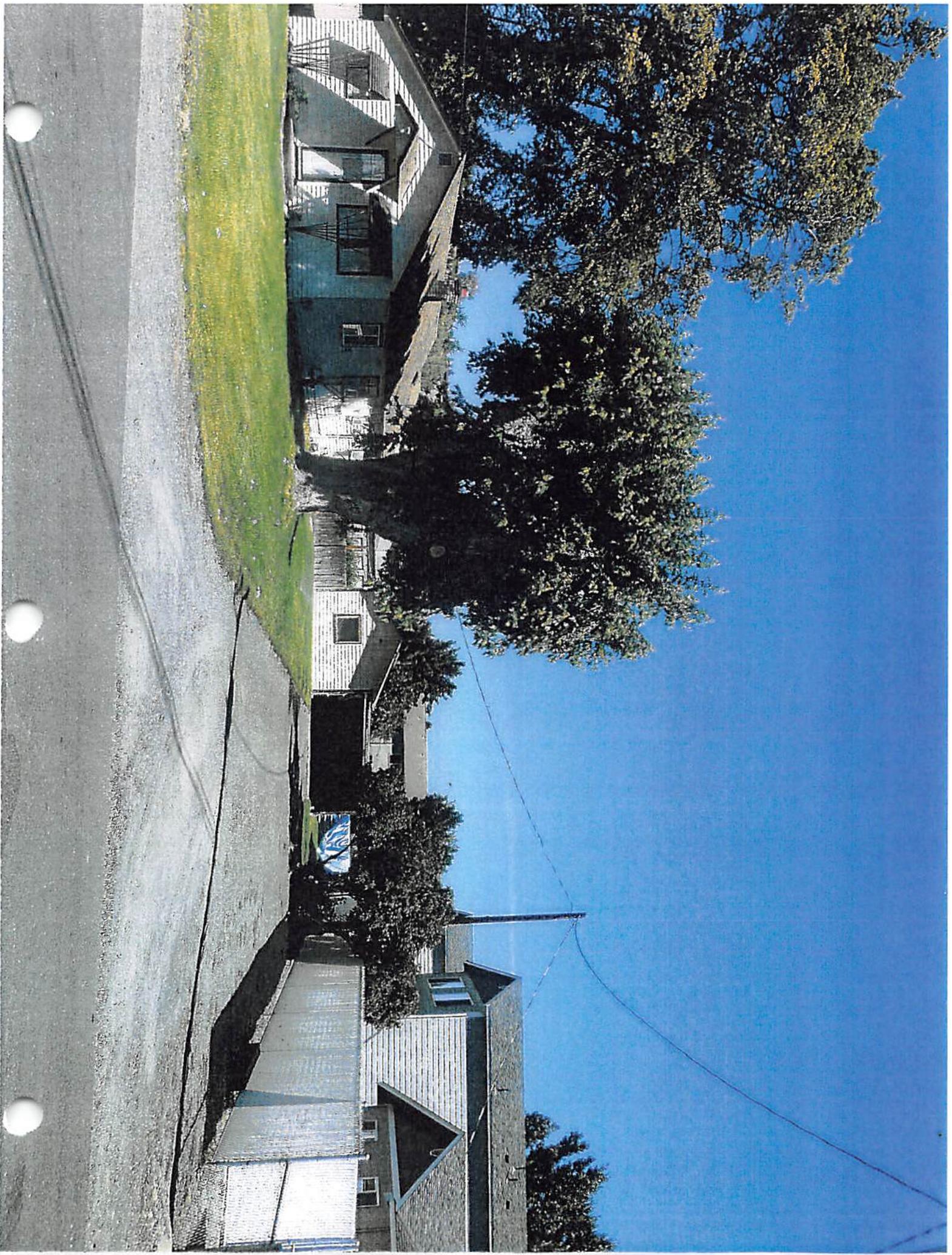




Exhibit C

**CITY OF SELAH
WASHINGTON**

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SELAH, WASHINGTON, ADDING A NEW SELAH MUNICIPAL CODE CHAPTER 10.24 RELATING TO PLANNED DEVELOPMENT; CREATING A PLANNED DEVELOPMENT (PD) OVERLAY ZONE; ESTABLISHING DEVELOPMENT REGULATIONS FOR PLANNED DEVELOPMENT OVERLAY ZONES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council desires to provide for an overlay zone in order to better regulate planned development activity within the City of Selah;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. New Chapter 10.24 SMC, Planned Development, Added. A new Selah Municipal Code Chapter 10.24, entitled "Planned Development," is hereby adopted to read as follows:

**Chapter 10.24
PLANNED DEVELOPMENT**

Sections:

- 10.24.010 Purpose**
- 10.24.020 Applicability**
- 10.24.030 Definitions**
- 10.24.040 Planned Development Overlay Zone—Created**
- 10.24.050 Planned Development Overlay Zone—Criteria**
- 10.24.060 Application—Procedure**
- 10.24.070 Application—Planned Development Plan**
- 10.24.080 Hearing Examiner Recommendation**
- 10.24.090 City Council Action—Effect of Approval**
- 10.24.100 Development Standards—Design**
- 10.24.110 Development Standards—Open Space**
- 10.24.120 Development Standards—Roads and Parking**
- 10.24.130 Limitations on Authority to Alter Zoning**
- 10.24.140 Modifications**

10.24.150 Reconstruction of Damaged Buildings or Improvements

10.24.160 Appeal

10.24.010 Purpose

The purpose of this chapter is to establish a planned development overlay zone to allow new development that is consistent with both the Comprehensive Plan and the intent of the underlying zoning district, but which would not otherwise be permitted due to limitations in dimensional standards, permitted uses, or accessory uses in the underlying zoning district. Planned Development Overlays are intended to:

A. Encourage flexibility in design and development that is architecturally and environmentally innovative and which will result in a more efficient aesthetic and desirable utilization of the land than is possible through strict application of otherwise applicable zoning and subdivision controls; and

B. Provide for the clustering of dwelling units, usable open space and mixed-density residential development, including but not limited to single-family, duplexes, townhouses, apartments and multiple-family dwellings as provided for by the Comprehensive Plan, while protecting and maintaining compatibility with existing residential neighborhoods.

10.24.020 Applicability

This chapter applies to applications for and development within a planned development overlay zone, and is to be used in conjunction with the land use classification system established in Title 10 of the Selah Municipal Code and with the Comprehensive Plan.

10.24.030 Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or they are more specifically defined in a section or subsection. Terms not defined shall be given their usual meaning.

“ADA” means the Americans with Disabilities Act of 1990.

“City Administrator” means the City of Selah City Administrator appointed pursuant to SMC 1.10.015.

“City Council” or “Council” means the City Council of the City of Selah, Washington.

“Code” or “SMC” means the Selah Municipal Code.

“Comprehensive Plan” means the 2005 Urban Growth Area Comprehensive Plan adopted by the City of Selah.

“City” means the City of Selah, Washington.

“Hearing Examiner” means the City of Selah Hearing Examiner appointed pursuant to SMC 1.60.020.

“Major Modification” means modifications which substantially change the character, basic design, density, open space or other requirements and conditions of the approved Planned Development Overlay, as further defined in SMC 10.24.140(B).

“Minor Modification” means modifications which may affect the precise dimensions or siting of buildings (i.e., lot coverage, height, setbacks) but which do not affect the basic character or arrangement and number of buildings approved in the Planned Development Overlay, as further defined in SMC 10.24.140(A).

“Planned Development Overlay” or “PDO” means any property with a Planned Development (PD) Overlay Zone designation.

“Planned Development Plan” or “PDP” has the meaning prescribed under SMC 10.24.070 as now in effect or as may subsequently be amended.

“Planning Department” means the City of Selah Planning Department.

“PD District” means an existing planned development, as of the effective date of this ordinance, which was created under the previously repealed Chapter 10.24 SMC.

10.24.040 Planned Development (PD) Overlay Zone—Created

A. Planned Development Overlay Zone Designation. A planned development approved in accordance with this chapter after the effective date of the ordinance adopting this chapter shall have a zoning designation of Planned Development (PD) Overlay Zone. The PD Overlay Zone designation will be reflected by a “(PD)” suffix qualifier on the underlying zoning designation for the parcel. For example, an approved planned development in a Two Family Residential zoning district would be classified as “R-2 (PD)”.

B. Authorized Uses. Planned Development Overlays shall incorporate the permitted land uses and development standards of the underlying zoning district pursuant to the Land Use Table in SMC 10.28.020; provided, however, that approval of a Planned Development Overlay shall modify and supersede the regulations of the underlying zoning district as provided in this chapter and as agreed in the Planned Development Plan.

Notwithstanding anything to the contrary in the underlying zoning requirements, a Planned Development Overlay may permit all proposed uses and developments under this chapter that are allowed by the Comprehensive Plan and that do not exceed the maximum densities in the Comprehensive Plan.

1. Residential Planned Development Overlays are permitted in the LDSF, R-1, R-2, and R-3 zones; provided, that:

- a. No more than 25 percent of a planned development in the LDSF or R-1 zone may consist of multiple-family dwellings; and
- b. No more than 25 percent of a planned development in the R-2 or R-3 zones may consist of single-family dwellings.

2. Reserved.

C. Extant Planned Development Zoning Districts. Existing planned developments, as of the effective date of the ordinance adopting this chapter, are and shall remain separate zoning districts created under the previously repealed Chapter 10.24 SMC (“PD Districts”), as indicated on the official zoning map adopted under SMC 10.04.010, and shall:

1. Retain the authorized uses considered to be conforming in the PD District; and

2. Permit minor and major modifications only within the existing approved boundaries of the PD District.

10.24.050 Planned Development (PD) Overlay Zone—Criteria

A Planned Development Overlay shall be approved or denied based upon the following criteria, which are listed in order of priority regarding the weight to be given to each factor:

- A. Compliance with this chapter;
- B. Substantial compliance with the Comprehensive Plan;
- C. The PDP's coherence with the surrounding area or its potential future use (i.e., a logical, orderly, and aesthetically consistent relationship);
- D. The system of ownership and the means of development, preservation and maintenance of open space;
- E. The adequacy of the size of the proposed Planned Development Overlay to accommodate the contemplated development; and
- F. Compliance with the City's subdivision code, if a proposed Planned Development Overlay is combined with a proposal to divide land into lots.

10.24.060 Application—Procedure

Applications for a proposed planned development shall be prepared, submitted, and processed as follows:

A. Preliminary PDP. The applicant shall prepare a Planned Development Plan (PDP) in accordance with SMC 10.24.070 and with the provisions of this chapter;

B. Pre-Application Conference. The applicant shall contact the Planning Department and schedule a pre-application conference to review the PDP for completeness and for compliance with the Comprehensive Plan and the provisions of this chapter;

C. Application Submittal. Following the pre-application conference, the applicant shall submit an application for Planned Development Overlay to the Planning Department on a form provided by the City, accompanied by all documents required by the application form, including the final PDP;

D. Determination of Completeness. Within 28 days of receiving a date-stamped Planned Development Overlay application, the Planning Department shall issue a determination of completeness in accordance with SMC 21.05.050;

E. Review Hearing. Within 30 days of a determination of completeness issued pursuant to paragraph (D) of this section, the City shall schedule a hearing before the Hearing Examiner in accordance with SMC 10.24.080 for review of the Planned Development Overlay application. The hearing itself may be set to begin on a date later than 30 days after issuance of the determination of completeness. The Hearing Examiner shall render a recommendation thereon to the City Council; and

F. City Council Action. Within 45 days of the City's receipt of the Hearing Examiner's recommendation, the City Council shall consider the

recommendation, after which it shall adopt, modify or reject the recommendation of the Hearing Examiner pursuant to SMC 10.24.090.

10.24.070 Application—Planned Development Plan

The Planned Development Plan shall include both project maps and a written project description containing, as applicable, the elements enumerated in subsections (A) and (B) of this section.

A. Project Maps. The PDP shall include an accurate map or maps drawn to a scale of not less than one inch to one hundred feet, depicting the following:

1. The boundaries of the proposed Planned Development Overlay;
2. Location, names and dimensions of all existing and proposed streets, public ways, railroad and utility rights of way, parks or other open spaces, and all land uses within 200 feet of the boundary of the proposed PDO;
3. Preliminary plans, elevations, number of dwelling units, types of use, and exterior appearance of all proposed buildings and structures, which shall include drawings, architectural renderings or photographs;
4. Proposed location and Square footage of community facilities and “common open space”;
5. Proposed public dedications;
6. Location of off-street parking areas, including garages, number and dimensions of parking places, width of isles and bays, and angles of parking, as well as points of ingress to and egress from the proposed PDO (see SMC 10.24.120(A));
7. Location, arrangement, number and dimensions of truck loading and unloading spaces and docks;
8. Location and directional bearing of all major physiographic features such as railroads, drainage canals and shorelines;
9. Existing topographic contours at intervals of not more than five feet;
10. Proposed topographic contours at intervals of not more than one foot;
11. Existing and proposed sewers, water mains and other underground facilities within and adjacent to the proposed PDO, and their certified capacities;
12. Proposed drainage facilities;
13. Proposed landscaping and the approximate location, height and materials of all walls, fences and screens;
14. Traffic flow plan, including pedestrian and vehicular circulation pattern and the location and dimensions of walks, trails or easements;
15. Indication of proposed stages or phases of development; and
16. In the event the proposed PDO is combined with a proposal to subdivide the land, the PDP shall also include a complete subdivision application pursuant to Chapter 10.50 SMC.

B. Written Project Description. The PDP shall include a written project description identifying the project as a residential planned development and setting out detailed information concerning the following:

1. Statement of the project goals and objectives, compatibility with the surrounding area, and potential future use (i.e., why it would be in the public interest and consistent with the Comprehensive Plan);
2. Proposed system of ownership;
3. Operation and maintenance proposal; (i.e., homeowner association, condominium, co-op or other);
4. All proposed land uses, including uses permitted in the underlying zone and uses not permitted in the underlying zone, and how such uses fit into the planned development concept;
5. All deviations from the development standards of the underlying zone;
6. Tables showing total numbers of acres, distribution of area by use, percent designated for dwellings and open space, number of off street parking spaces, street, parks, playgrounds, and schools;
7. Tables indicating overall densities and density by dwelling types, and any proposals for adjustments to the density limitations;
8. Restrictive covenants;
9. Waste disposal facilities;
10. Parking and lighting, as required by SMC 10.24.120(A);
11. Water supply;
12. Public transportation;
13. Community facilities; and
14. Development timetable.

10.24.080 Hearing Examiner Recommendation

In accordance with 10.24.060(E), the Planning Department shall, in consultation with the Hearing Examiner, fix the date at which the Planned Development Overlay application shall be considered and reviewed by the Hearing Examiner at an open record public hearing.

A. Notice of Hearing. Notice of the hearing shall be published once not less than 10 days prior to the hearing in the official newspaper of the City. Additional notice of such hearing may be given by mail, posting on the property, or in any manner the Planning Department or Hearing Examiner deems suitable to notify adjacent owners and the public.

B. Conduct of Hearing. At the hearing, the Hearing Examiner shall consider all relevant evidence to determine whether the proposed Planned Development Overlay should be approved, conditionally approved, or disapproved according to the Planned Development Overlay criteria enumerated in SMC 10.24.050.

C. Written Recommendation. Not later than 10 business days following the conclusion of the hearing, or any continued hearing, the Hearing Examiner shall render a written recommendation to the City Council and transmit a copy thereof to all parties of record. The Hearing Examiner may recommend that the proposed Planned Development Overlay be approved, conditionally approved, or disapproved. Conditions of approval shall be precisely recited in the Hearing Examiner's recommendation.

10.24.090 City Council Action—Effect of Approval

A. City Council Action. Within 45 days of the City's receipt of the Hearing Examiner's recommendation on any proposed Planned Development Overlay, the City Council shall consider the recommendation at a public meeting, where it may adopt, modify or reject the recommendations of the Hearing Examiner.

B. Effect of Approval. Upon the City Council's approval of a Planned Development Overlay, the subject property shall be designated with the "(PD)" suffix qualifier as provided in SMC 10.24.040(A). The City Council shall promptly thereafter initiate a legislative amendment the official zoning map pursuant to SMC 10.40.030(1) to reflect the new zoning designation, unless such zoning map amendment application has been included in the approved planned development application.

C. Failure to Develop. If substantial construction has not been performed on the project within 18 months after the date of approval, the Planned Development Overlay Zone designation shall lapse, and the property shall revert by operation of law to the underlying zoning district, regardless of any contrary designation on the official zoning map. The City Council may choose to extend this 18-month period one time, for an additional period not to exceed 12 months, upon good cause shown in writing by the applicant. The City Council's decision with respect to any such extension shall be final.

10.24.100 Development Standards—Design

The following design standards shall apply to all Planned Development Overlays ("PDO or PDO's").

A. Pedestrian-Oriented Design. There shall be a distinct separation of vehicular and pedestrian traffic within a PDO. The design must be in compliance with the City's public parks plan and Comprehensive Plan. This may require an improved pedestrian trail system that links the PDO's primary uses together and an improved pedestrian/bicycle trail easement which links at least a portion of the PDO's trail system to the pedestrian amenities adjacent to the PDO.

B. Compatible and Efficient Layout. Streets, lot lines, low-impact development techniques and facilities, landscaping areas, open space, building footprints and/or other features shall be arranged for maximum traffic flow efficiency and minimal impact to natural features, existing traffic patterns and uses in the vicinity. Vehicular entrances and exits to the PDO shall be minimized by providing for common ingress, egress and circulation areas.

C. Compatibility with Adjacent Uses. The exterior of the PDO shall be highly compatible with adjacent uses. Compatibility may include, but is not limited to, restricted uses along the exterior of the development, building footprint location, open spaces, buffers, landscaping, architectural style and pedestrian/vehicular circulation linkages. The PDO shall be integrated into the existing community fabric. Building height may not be used as criteria for judging compatibility. PDP's shall provide adequate setbacks in order to avoid negative impact to adjacent structures on neighboring properties. Side setbacks for structures 26 feet and higher shall be a minimum of 12 feet from the property line. Planned development densities shall not be used as criteria to judge

compatibility with adjacent uses and properties when adjacent properties are zoned differently.

D. Variety of Housing Types, Styles. Housing types within a PDO greater than or equal to one acre or six dwellings shall be varied to allow for a range of architectural variety. Although an overall architectural theme may be appropriate, there shall be a range of housing styles within a theme to avoid the monotony of identical structures.

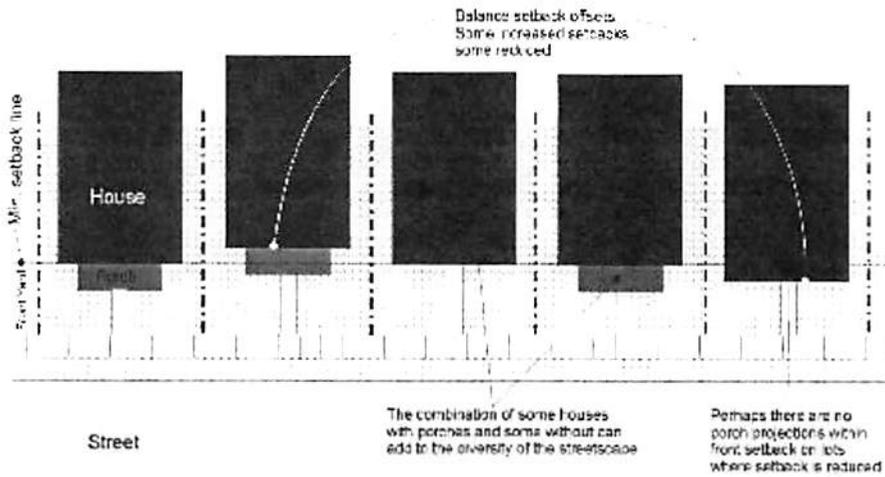
E. Design Diversity. PDO's shall incorporate measures that promote design diversity. This can be accomplished by (see Figures 10.24.100(E)-1 and 10.24.100(E)-2;

1. Providing a mixture of lot sizes and/or front setbacks (which could be specified on the plat); and/or

2. Providing a diversity of floor plans and facade treatments that avoid monotonous streetscapes. This could be accomplished with conditions on the plat and/or special covenants required for lots.



Figures 10.24.100(E)-1 and 10.24.100(E)-2. The above homes feature a good diversity of facade designs, colors and rooflines.



Figures 10.24.100(E)-3 and 10.24.100(E)-4. Avoid monotonous rows of duplicative homes (top example). Another solution is to prescribe variable setbacks such as in the bottom example.

10.24.110 Development Standards—Open Space

Common open space consists primarily of large usable areas which are owned by all property owners within a PDO and may include: buffer yards, public space, landscaped or natural areas, recreational areas or an area for a recreation/socialization facility. Sufficient common open space for the types of uses envisioned within a PDO shall be provided. ***The minimum allowable open space for a planned development will be no less than 15 percent of the square footage of the PDO.***

A. Planned Development Open Space Design Criteria. Common open spaces include landscaped courtyards or decks, gardens with pathways, children's play areas, or other multi-purpose recreational and/or green spaces. Special requirements and recommendations for common open spaces include the following:

1. Required setback areas shall not count towards the open space requirement unless those areas are portions of a space that meets the dimensional and design requirements and guidelines set forth below:

- a. Spaces shall be large enough to provide functional leisure or recreational activity. To meet this requirement, no dimension shall be less than 15 feet in width;

- b. Spaces (particularly children's play areas) shall be visible from at least some dwelling units and positioned near pedestrian activity;
- c. Spaces shall feature paths, landscaping, seating, lighting and other pedestrian amenities to make the area more functional and enjoyable;
- d. Individual entries may be provided onto common open space from adjacent ground floor residential units, where applicable. Small, semi-private open spaces for adjacent ground floor units that maintain visual access to the common area are encouraged to enliven the space. Low walls or hedges (less than three feet in height) are encouraged to provide clear definition of semi-private and common spaces;
- e. Common space shall be separated from ground floor windows, automobile circulation, service areas and parking lots by utilizing landscaping, low-level fencing, and/or other treatments that enhance safety and privacy (both for common open space and dwelling units);
- f. Space should be oriented to receive sunlight, facing east, west, or (preferably) south, when possible;
- g. Space should be sited to minimize impacts from prevailing winds;
- h. Stairways, stair landings and above grade walkways shall not encroach into minimum required common open space areas. An atrium roof covering may be built over a courtyard to provide weather protection provided it does not obstruct natural light inside the courtyard.



Figure 10.24.110(A)-1. Examples of common open space.

B. Indoor Recreational Areas. Indoor recreational areas shall meet the following conditions:

1. The space shall be located in a visible area, such as near an entrance, lobby, or high traffic corridors; and
2. Space shall be designed specifically to serve interior recreational functions and not merely be leftover, un-rentable space used to meet the open space requirement. Such space shall include amenities and design elements that will encourage use by residents.

C. Shared Rooftop Decks. Shared rooftop decks shall meet the following requirements:

1. Space shall provide amenities such as seating areas, landscaping, and/or other features that encourage use;
2. Space shall feature hard surfacing appropriate to encourage use by residents; and
3. Space shall incorporate features that provide for the safety of residents, such as enclosures, railings, and appropriate lighting levels.

D. Community Gardens. (See Figure 10.24.110(E)-1.) Community gardens shall meet the following conditions:

1. All spaces shall be located to receive at least six hours of natural sunlight per day in summer months;
2. All spaces shall have access to irrigation;
3. All spaces shall have tillable soil to a depth of one foot, minimum;
4. Spaces may be provided in shared or private yard areas, at ground level, on balconies, or on rooftop decks;
5. Where some or all of the community garden is within shared common open space, a management program shall be required setting forth the following provisions:
 - a. Access to interested residents meeting minimum space requirements set forth herein; and
 - b. Provisions for space management and maintenance; and
 - c. No additional fees shall be assessed to space users beyond standard home owners association or resident maintenance fees; and
6. Where community garden space is provided within shared common open spaces, the following standards shall apply:
 - a. Walkways between planting beds shall be at least two feet wide; and
 - b. Planting beds shall be raised above surface level. For ground level spaces, planting beds shall be raised at least six inches. For rooftop spaces, planting beds shall be raised by at least 18 inches.



Figure 10.24.110(E)-1. Community garden example.

10.24.120 Development Standards—Parking, Lighting and Roads

A. **Parking Plan.** A detailed parking plan shall be submitted with a Planned Development Overlay application. The parking plan shall contain the following information: the existing and proposed development; parking stall and driving aisle location and dimensions; loading and maneuvering area; curb cuts; light fixtures; adjacent streets; landscape islands and peninsulas and other relevant features of the proposed parking facility. The parking plan shall also include the location and square footage for each existing and/or proposed structure or use area and the proposed area, including floor area, dedicated to each use. A lighting plan detailing light standard height, location of lights, wattage, and light dispersion patterns shall be submitted with the parking plan. The parking plan may be combined with the landscaping plan. The parking plan shall be subject to approval by the City Planner.

Separate plans for off-street parking for residential developments with less than three proposed units are not required except when the parking space for residential uses is to be located on a lot other than the one on which the residential building is located.

1. Computation of required off-street parking spaces.

- a. **Spaces Required.** Except as modified in subsections below, off-street parking areas shall contain at a minimum the number of parking spaces as stipulated in the following table. Off-street parking ratios expressed as number of spaces per square feet means the usable or net square footage of floor area, exclusive of nonpublic areas. Nonpublic areas include but are not limited to building maintenance areas, storage areas, closets or restrooms. If the formula for determining the number of off-street parking spaces results in a fraction, the number of off-street parking spaces shall be rounded to the nearest whole number with fractions of 0.50 or greater rounding up and fractions below 0.50 rounding down.

Computation of required off-street parking spaces.

Category of Land Use	Minimum Parking Spaces Required
Planned Development	
Dwelling, single-family/duplex/townhouse	2.0 per dwelling unit; for structures containing more than 4 bedrooms, one additional space for each bedroom in excess of 4 shall be provided. NOTE: Tandem parking to accommodate 2-car garages are permitted for single-family and duplex dwelling units.
One bedroom unit	1.5 per unit

Computation of required off-street parking spaces.

Category of Land Use	Minimum Parking Spaces Required
Cottage	1.5 per unit
Studio units	1.2 per unit

B. Street Lighting Plan

1. All PDO's shall provide street lights in accordance with the standards for such improvements of the City of Selah and they shall be owned and operated by the City. A street lighting plan submitted by the applicant and approved by the Public Works Department shall be as set forth in the current edition of the WSDOT/APWA Standard Specifications and as directed by the City except where noted herein. All public street light designs shall be prepared by an engineering firm capable of performing such work. The engineer shall be licensed by the State of Washington. All PDO's shall include conduit installed so as to provide adequate capacity for future installation of complete street lighting. All street light electrical installations including wiring, conduit, and power connections shall be located underground. Exception to underground installation is permissible in limited locations with approval of the Public Works Department. The General Notes below need to be included on any plans dealing with street design.

General Notes (Street Light Construction)

1. All workmanship, materials and testing shall be in accordance with the current edition of the Standard Specifications for Road, Bridge, and Municipal Construction prepared by the Washington State Department of Transportation (WSDOT), and the American Public Works Association (APWA) General Special Provisions (GSP's) for Division One General Requirements as the standard specifications governing all design and construction of public works improvements by the City and by private developers.

2. Developer or developer's engineer shall submit proposed lighting layout and types on plans. The Public Works Department will be required to approve lighting plans prior to development approval.

C. Local Access Street Design.

1. Purpose. The purpose of planned development street design standards is to provide safe and attractive local access streets that provide access to planned development property.

2. Implementation. Street section connections to existing curbs/sidewalks shall be as follows:

- a. When curbs/sidewalks exist on one abutting end of a proposed planned development project, the new planned development shall transition from its existing location to the new street section as provided by current code requirements; and
- b. When existing curbs/sidewalks exist on both abutting ends of a proposed project (infill), or along the frontage of the proposed project, the project applicant may petition the public works director

for a departure from the code streetscape requirements. This departure, if granted, would allow for the continuation of the existing roadway section across the proposed planned development. As a condition of departure, the applicant shall be required to dedicate necessary rights-of-way to construct improvements and execute a deferral agreement to participate in a future project to construct said improvement(s).

3. Design. There are two optional designs for local access streets, including 20-26 foot, and over 26 and less than 32-foot-wide streets, to allow flexibility for planned development design while accommodating functional access needs and community design goals. Travel lanes are shared auto and bicycle lanes. Sidewalks are required, at the minimum, on one side of the street.

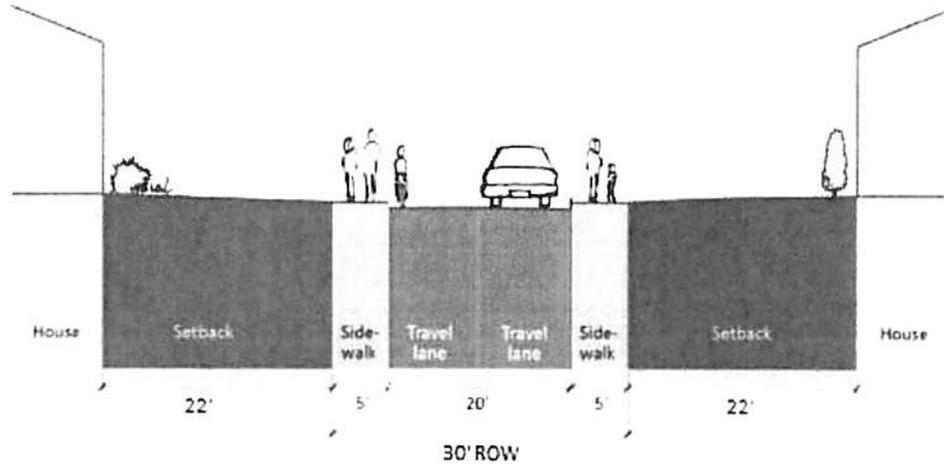
- a. Continuity. Designs shall be consistent on individual blocks. An exception is for a hybrid design. An example would be a 20-foot street that integrates parking pockets on one side of the street.
- b. Curbing and gutters are required for all street designs.
- c. Limitation for 20-foot streets. No parking will be allowed on 20 foot wide streets. 20-foot wide streets are intended to be used only in special cases where there is available guest parking on nearby streets or additional off-street parking is provided within walking distance of homes. All dwelling units shall be within 500 feet (measured along sidewalks or other internal pathways) of available on-street or off-street guest parking equal to one space per dwelling unit, minimum. Developments may integrate parallel parking bulb-outs (see Figure 10.24.120(B)-1) along these streets, provided the bulb-outs take up no more than 50 percent of the planting strip length.
- d. While two sidewalks are encouraged for all street designs, they are not mandatory. One sidewalk for each type of street is allowed.
- e. Driveways shall have a minimum 22-foot setback from the edge of the sidewalk to garage or covered parking.



Figure 10.24.120(B)-1: Example of a local access street with integrated parallel parking bulb-outs.

20 Foot to 26 Foot Wide Streets

20' Wide Street Depicted



20' Wide Street, One Sidewalk Depicted

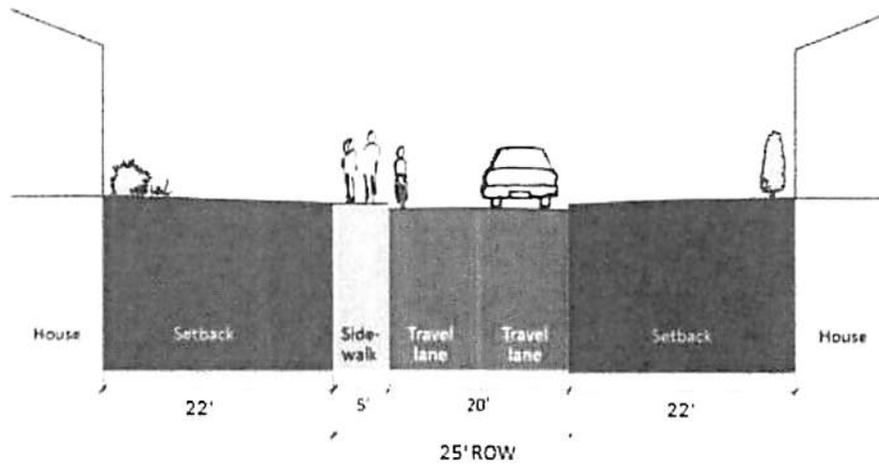
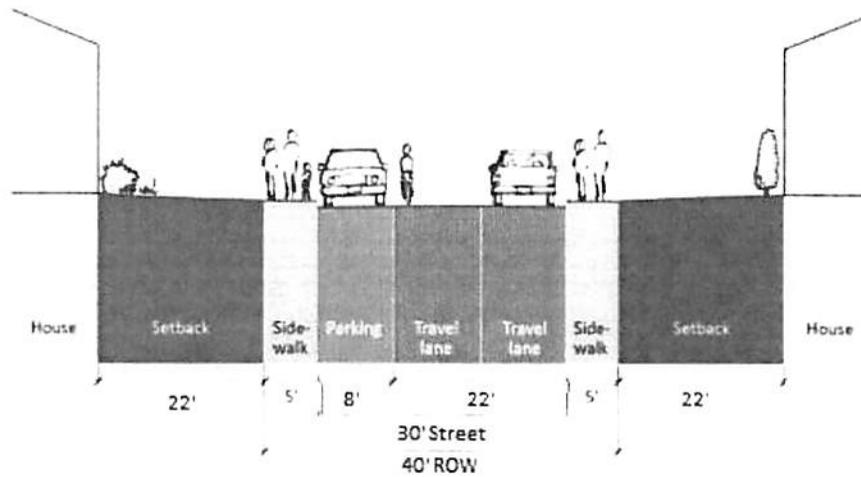


Figure 10.24.120(B)-2: Cross-sections for local access street design options (with standard dimensions)

Streets Over 26 Feet and Less Than 32 Feet Wide

30' Wide Street Depicted



30' Wide Street, One Sidewalk Depicted

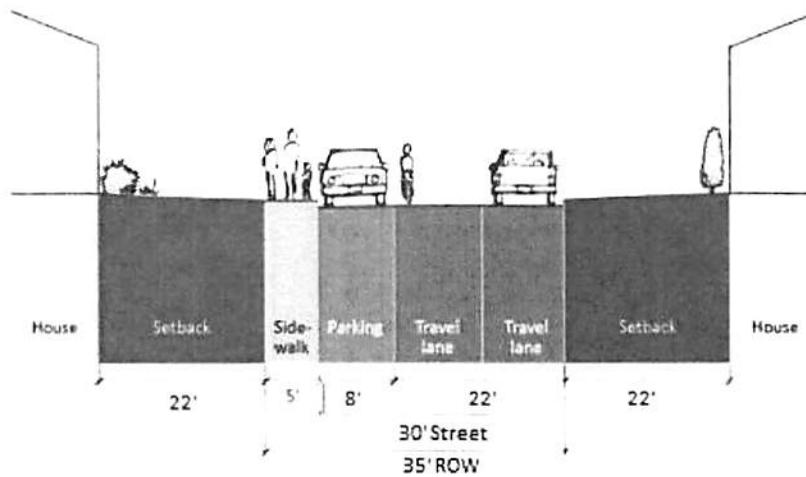


Figure 10.24.120(B)-2 Continued: Cross-sections for local access street design options (with standard dimensions)

10.24.130 Limitations on Authority to Alter Zoning

The following provisions of the Selah Municipal Code may not be altered pursuant to this chapter:

- A. Any provision of this Chapter 10.24, Planned Development;
- B. Any provision of Title 10, Zoning, which specifically states that it is not subject to modification or alteration; and
- C. Any provision of the Land Use Table in SMC 10.28.020.

10.24.140 Modifications

An applicant may request a modification to any element or provision of an approved Planned Development Overlay. All modification applications shall be deemed either "minor" or "major."

A. Minor Modifications. Minor modifications may be approved administratively in accordance with the procedure set forth in the PDP, where applicable, or by the City Administrator. A modification shall be considered "minor" if it:

1. Would not increase the total number of dwelling units in the Planned Development Overlay above the maximum number set forth in the PDP, or would not decrease the number of dwelling units by more than 10 percent;
2. Would not decrease the minimum - or increase the maximum - density for residential areas of the Planned Development Overlay beyond the density ranges in the PDP;
3. Would not decrease the approved amount of open space or recreation space;
4. Would not increase any adverse environmental impact, provided that additional environmental review may be required to determine whether such change is likely to occur;
5. Would not adversely impact the project's fiscal projections to the detriment of the City;
6. Would not significantly impact the overall design of the PDP; and
7. Would not significantly alter the size or location of any designated open space resulting in a lowered level of service, and would not reduce the total amount of required open space.

B. Major Modifications. Major modifications shall be reviewed using the same procedures applicable for new Planned Development Overlay applications set forth in SMC 10.24.060. Any modification that is not minor pursuant to subsection (A) of this section shall be considered "major." The City may specify additional criteria for determining whether a proposed modification is minor or major by requiring such provision in the PDP, but the criteria listed in this section cannot be modified or reduced by the PDP.

10.24.150 Reconstruction of Damaged Buildings or Improvements

Replacement or reconstruction of any buildings or improvements that have been damaged or destroyed within the Planned Development Overlay shall substantially conform to the original PDP.

10.24.160 Appeal

Any final decision by the City Council made pursuant to this chapter may be appealed to the Yakima County Superior Court within 21 days from the date of the decision being appealed, pursuant to Chapter 36.70C RCW, the Land Use Petition Act.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2015.

CITY OF SELAH

John Gawlik, Mayor

ATTEST/AUTHENTICATED:

Dale Novobielski, City Clerk/Treasurer

APPROVED AS TO FORM:

Robert F. Noe, City Attorney

Filed with the City Clerk: _____

Passed by the City Council: _____

Date of Publication: _____

Effective Date: _____

Exhibit D

Plan of Action and Milestones (POA&M) for Re-Write of SMC 10.24, Planned Development Zoning District

1. Form planning team. (Action; Don Wayman), 29 May 2015.
2. Planning team formed. (Don Wayman, Bob Noe, Tom Durant, Gary Hanna, Carl Torkelson, Willy Quinnell), 29 May 2015.
3. Discuss options for engaging consultant and outline what we want to change in this sub-chapter. (Planning Team), 29 May 2015.
4. Retained the services of Kenyon Disend, PLLC, Issaquah, Wa. in order to provide consulting services in SMC 10.24 re-write. 15 June 2015
5. Receive first draft of SMC 10.24 re-write from Kenyon Disend for review by Planning Team. 8 July 2015
6. Socialize first draft to public via city web site. 8 July 2015
7. Send first draft to Planning Commission for review. 13 July 2015
8. Planning Commission hearing on first draft. 21 July 2015
9. Second draft completed by Planning Commission. 28 July 2015
10. Second draft socialized via city web site. 28 July 2015
11. Planning Commission hearing on second draft. 4 Aug 2015
12. Final draft completed by Planning Commission 11 Aug 2015
13. Final draft socialized via city web site 11 Aug 2015
14. Final draft presented to City Council. 25 Aug 2015

Exhibit E



CITY OF SELAH

*115 West Naches Avenue
Selah, Washington 98942*

*Phone 509-698-7328
Fax 509-698-7338*

June 5, 2015

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

Ken Harper, Esq.
Menke Jackson Beyer, LLP
807 N. 39th Ave
Yakima, WA 98902

Re: Ordinance Repealing Selah Municipal Code 10.24; Effect on Pending Development Applications; and Vesting

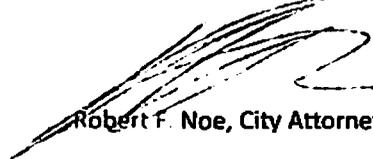
Dear Carl and Ken:

This letter serves to confirm that Torkelson Construction, Inc.'s development projects: 1) Whispering View Estates; 2) Eagle Ridge Phases 2, 3, and 4; and 3) Speyers Court, are vested and unaffected by the City Council's May 26, 2015 passage of Ordinance No. 1964 repealing Chapter 10.24 of the Selah Municipal Code, Planned Development. Those development projects will continued to be processed under the code provisions in existence at the time they were submitted and accepted as complete applications notwithstanding Ordinance No. 1964.

This is consistent with the City Council's provision in Ordinance No. 1964, which specifically provides that pending applications and projects are vested and not affected by the repeal. This is also consistent with Washington State law addressing the vesting of development applications.

Please let me know if you need anything further at this time.

CITY OF SELAH LEGAL



Robert F. Noe, City Attorney

Cc: Mayor John Gawlik
Don Wayman, City Administrator
Tom Durant, Planner
Joe Henne, Public Works Director



Exhibit F

City of Selah
Planning Commission Minutes
of
September 15, 2009

Selah Council Chambers
115 W. Naches Ave.
Selah, Washington 98942

A. Call to Order

The meeting was called to order to by Chairman Munson at 6:00 p.m.

Roll Call:

Members Present: Commissioners Quinnell, Roberts and Munson.

Members Absent: Commissioners Smith and Eagles

Staff Present: Dennis Davison, Community Planner, Diana Turner, Secretary.

Guests: Carl Torkelson

C. Agenda Changes None.

D. Communications

1. Oral - None
2. Written - Y.V.C.O.G Newsletter

E. Approval of Minutes

Chairman Munson called for a motion on the minutes of the Planning Commission meeting of September 1, 2009.

Commissioner Quinnell moved to approve the minutes, Commissioner Roberts seconded. Minutes were approved with voice vote 3/0.

F. Public Hearing

1. Old Business - None
2. New Business
 - a. SELAH MUNICIPAL CODE AMENDMENT

Chairman Munson opened the public hearing.

Mr. Davison presented the staff report on File No. Z.O. Text Amendment 2009-01

The proposal is to amend Selah Municipal Code, Title 10, Chapter 10.24 Planned Development Zone and the proponent is the City of Selah Planning Department.

HISTORY: Selah Municipal Code, Title 10 (Zoning), initially created in 1969, and subsequently amended from time to time, the most recent Planned Development text amendment in 2004.

SURROUNDING LAND USE: Not applicable as the proposed zoning ordinance text amendment would apply throughout the municipality.

VICINITY ZONING: Not applicable as the proposed zoning ordinance text amendment would apply throughout the municipality.

2005 CITY OF SELAH URBAN GROWTH AREA COMPREHENSIVE LAND USE PLAN: Not applicable as the proposed zoning ordinance text amendment would apply throughout the municipality.

STAFF RECOMMENDATION: Approval of the proposed text amendment to Selah Municipal Code Title 10, Chapter 10.24.

Mr. Davison stated the staff report is brief and simple. Staff has looked at these changes along with Mr. Noe and they have been worked on by all. These were submitted to us as recommendation for changes and we have changed a few words for clarity but it has not changed much. We are recommending you approve it and forward it on to the Council.

Chairman Munson stated he was not here for the initial study session but he has gone through it. To clarify it, a developer would bring in his request on a specific piece of property regardless of what zone it might be and submits a plan and change the zone to a Planned Development and the Hearings Examiner would hear it. There would be a set of conditions that the developer would have to comply with.

Mr. Davison stated that the developer would submit his plan, which would be a written document and map. He would then go through the public hearing, take testimony and if he got approved ultimately by Council what is in the documents is what he has to build. There can be minor changes such as turning a building or he might want to move it closer to the swimming pool. Those can be handled administratively. The one controlling factor in a Planned Development is the Comprehensive Plan. If the Comp Plan designates the property as moderate density it can not exceed the total number of units allowed in that density.

Chairman Munson asked the other Commissioners if the red lettering was what they were presented with at the study session.

Mr. Davison stated most of what is there is the same. Mr. Noe suggested changing only a few words to clarify the wording.

Commissioner Roberts asked Mr. Davison about the fact the code does not specify residential versus commercial developments.

Mr. Davison stated the Planned Development could be either depending upon the zoning.

Commissioner Roberts asked if they could do residential in a commercial zone?

Mr. Davison stated no. The Comprehensive Plan would be the overriding code to adhere to.

Chairman Munson asked Mr. Torkelson if he had read the proposed changes.

recommendation to the city council. In addition, since the result of this proceeding is a recommendation to the city council, and a recommendation could involve addressing open space issues presented by the comprehensive plan and the PD ordinance, there is no clear benefit to requiring reapplication as an alternative to reopening the current proceeding. In the interest of administrative efficiency and to assure fairness, I will reopen the hearing, subject to the applicant providing its written consent. Please provide a copy of such written consent for the record. Written notice of the reopened hearing and the subject matter to be addressed should be provided to persons who signed in at the earlier hearing. I look forward to hearing from you regarding scheduling of the reopened hearing.

On July 30, 2010, the Hearing Examiner received a letter from Torkelson Construction, Inc. requesting that the hearing be reopened. On August 2, 2010 or thereabout, city staff notified persons who attended the initial hearing of the reopening of the hearing set for August 5, 2010. David and Kathryn Hoffert attended the August 5 hearing, along with Carl Torkelson and Community Planner Dennis Davison. At the request of Ms. Hoffert, the record was kept open for seven days to allow time for additional public comment. After the hearing was closed, timely public comment was provided by David Hoffert, Kathryn Hoffert, Kathleen Fountain and Carmen Lowrie.

II. SUMMARY OF RECOMMENDATION.

The Hearing Examiner continues to recommend denial of the rezoning of the property to PD as proposed. Consequently, the Hearing Examiner also continues to recommend denial of the related subdivision. Torkelson has, to an extent, addressed concerns about open space requirements in both the Selah Comprehensive Plan and Chapter 10.24 SMC in new information provided upon reopening of the hearing. However, Torkelson has not carried its burden of showing that benefits to be gained from the rezone in terms of resulting efficiency, aesthetics desirability, or other public purposes from the rezone warrant relaxation of otherwise applicable zoning and subdivision design standards that would result from rezone approval.

Based on the staff report and exhibits, the viewing of the site and comments received at the open record hearing and in writing, and a review of pertinent development regulations and comprehensive plan, the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

The applications for rezone and subdivision were filed by Torkelson Construction, Inc., P.O. Box 292, Selah, WA 98942. The property owners of record are Carl Torkelson and Candi Torkelson.

2. LOCATION.

The properties are located at 614 and 622 South 5th Street.

3. PARCEL NUMBER(S).

The Yakima County Assessors Tax Parcel Numbers for the subject properties are 181302-13414 and 181302-13415.

4. APPLICATION.

The applications propose to rezone approximately 0.6688 acre from Multiple Family Residential (R-3) to Planned Development (PD) and subsequently subdivide the site into twelve (12) single family residential lots consistent with the Planned Development Plan and Program. The total acreage for the project is 0.6688acres.

Proposed Lot Size	Approximate Dimensions	Lot Area
Lot 12:	40' x 75'	3,074 sq. ft.
Lot 11:	36' x 75'	2,700 sq. ft.
Lot 10:	36' x 75'	2,700 sq. ft.
Lot 9:	30' x 75'	2,250 sq. ft.
Lot 8:	30' x 75'	2,250 sq. ft.
Lot 7:	35' x 75'	2,635 sq. ft.
Lot 6:	35' x 64'	2,286 sq. ft.
Lot 5:	30' x 65'	1,950 sq. ft.
Lot 4:	30' x 65'	1,950 sq. ft.
Lot 3:	38' x 65'	2,521 sq. ft.
Lot 2:	38' x 65'	2,521 sq. ft.
Lot 1:	35' x 65'	2,296 sq. ft.

The average of the proposed lots is 2,427.75 sq. ft. The residential density of the project in 16.05 units per gross acre.

Potable water would be provided to each residence by private individual service lines from meters located adjacent to South 5th Street. Individual sewer line connection would be provided to the existing 8" sewer main on the east boundary of the subject properties. The Plat and development plan do not show easements for the individual private sewer and domestic water line connections to the city utility system.

Lots 1-6 (abutting South 5th Street) would have direct access to 5th Street by individual driveways. Lots 7-12 would access 5th Street via a shared 20-foot access easement connecting to 5th Street between lots 2 and 3.

Storm water would be retained on site for the majority of the property using a storm drain system installed on the northeast corner of the project. Driveway runoff on Lots 1-6 would run into the city storm drain system.

The development plan, as amended, would commit portions of Lots 10 and 11 to use as an open space park area. The landscape plan for the open space indicates three picnic table and 7 shade trees placed throughout the park area. The balance of the area to the east of the retaining wall would be put into lawn. The use of the area as open space would be protected by easements over the two lots. The gross area covered by the easements is 900 to 1,000 square feet, more or less. If included in the common areas, the open space would be maintained by a Homeowners Association in accordance with the Declaration of Covenants, Conditions and Restrictions accompanying the rezone application. The design of the park is based on the applicant's plan to market the resulting lots to persons not likely to be interested in the maintenance requirements for a standard sized single family residential lot.

5. CURRENT SITE CONDITION AND ZONING

The property contains four (4) duplexes and four foundations for individual structures and is zoned Multiple Family Residential (R-3). The proposed open space park area has a gross area of 1,000 square feet. It contains a retaining wall across its west 7 feet, more or less. It also contains a portion of the HVAC system for the existing dwelling unit on Lot 10, and an electrical transformer and cable service distribution box on the east end.

6. NEIGHBORING ZONING AND LAND USE.

Adjacent lands to the North and West are zoned Multiple-Family Residential (R-3). Adjacent lands to the East are zoned Two-Family Residential (R-2) while lands to the South are zoned One-Family Residential (R-1).

The neighboring land use is as follows:

<u>North</u>	Vacant hillside with a single triplex located 300 feet North.
<u>South</u>	A single residence, Southern Avenue and the developed subdivision of "Oakwood Manor" (6 lots) and "South Terrace Addition" (11 lots).
<u>East</u>	Duplexes and individual residences.
<u>West</u>	An approved twenty-four (24) unit multi-family residential development under construction on a 1.99 acre parcel.

7. ENVIRONMENTAL REVIEW.

The City of Selah adopted a previously finalized Mitigated Determination of Non significance (MDNS) issued May 5, 2009 for the proposed rezone and subdivision. No SEPA appeal has been filed in this matter.

8. PROJECT ANALYSIS

a. *Review Criteria.*

The review criteria applicable to a PD application are set out in SMC 10.24.060 and are discussed in turn below.

b. Application of the 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 High Density Residential on the adopted 2005 Future Land Use Map. This designation provides for a maximum density of twenty-four (24) dwelling units per acre. The proposed density is 16.05 dwellings per gross acre, and so complies with the plan density maximum. The comprehensive plan indicates that the future land use designation is intended to accommodate compact development with minimum lot sizes of one acre.

According to the comprehensive plan, each development of land in the High Density Residential future land designation is intended to provide usable open space for the enjoyment of the residents therein. The proposed PD provides for an open space park area, protected by easements on Lots 10 and 11, containing picnic tables, benches and shade trees. The amenities offered by the park area are consistent with the comprehensive plan provisions.

Upon reopening of the record in this matter, public comment (Letter of David Hoffert to Patrick Spurgin dated August 9, 2010) noted that the earlier subdivisions of the subject property did not comply with the minimum lot size requirements in the comprehensive plan. Comprehensive Plan Amendment 2006-3 deleted reference to a minimum lot size for the High Density Residential future land use designation.

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

If a Planned Development does not present impacts that are greater than the permitted use of the property under the existing zoning, it would be inappropriate to deny the Planned Development on the basis of impacts to the surrounding area. *Hansen v. Chelan County*, 81 Wn.App. 133, 913 P.2d 409 (Wash. App. Div. 3 1996). The property is subject to development into multifamily residential units to a density of 24 units per acre, subject to compliance with zoning standards for R-3 Development. Environmental impacts from multifamily residential development of the property were analyzed in the MDNS adopted by the city for this proposal. The proposed density is 16 units per acre. There is no issue of harmony based on density.

The proposed project design results in 7 road approaches to South 5th Street, which is more than twice the number of approaches that would result from minimum R-1 lot sizes along a similar length of road frontage. Public comment identified concerns with the consequences of the driveways and impairment of pedestrian traffic along 5th Street. However, the record does not contain substantial evidence that, by itself, the concentration of driveways would be discordant with the surrounding area.

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

According to Appendix A to Chapters 10.02 through 10.48 SMC, "open space" means undeveloped land that serves a functional role in the life of the community. This term is further defined as follows:

- (1) Common Open Space. Open space within or related to a development that is not dedicated for public use, but is designed, intended and legally committed for the common use or enjoyment of the residents of the development.

To meet the comprehensive plan provisions for open space, it must be "designed, intended and legally committed" for the common use and enjoyment of the residents of the development or be a designated local park. The plan for landscaping and installing picnic tables developed for the open space park area is consistent with requirements for design and intended use. The applicant proposes to use easements to protect the open space values in accordance with the provisions of the proposed Declaration of Covenants, Conditions and Restrictions (CCRs).

The CCRs currently do not provide for community scale recreational open space protection, though they do provide for the inclusion of yards within the Common Area. The common area is defined (CCR 1.5) to include road easements from the public street, maintenance and yard easements and all improvements owned by the project home owners association. The CCRs attaches an easement over the defined common area to each lot for various purposes. CCR 2.2. They do not provide for the easements over the individual lots for which the homeowner's association would hold the dominant tenement.

Adequate open space protection will require a separate provision establishing a dominant easement in gross to be held, developed pursuant to the landscaping plan and maintained by the homeowners association. Such an easement should not subject other terms in the CCRs providing for changes to common areas. The easement language will have to provide for appropriate intervention by the City to protect the recreational easement pursuant to SMC 10.24.090. Any recommendation for approval of the PD would require submission of language creating the recreational common open space area conservation easement consistent with SMC 10.24.090 for approval by the City Attorney.

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

The PD ordinance does not provide specific guidance as to what would constitute the "adequate" size of property to support a PD approval. When a local government provides only a general standard in a land use ordinance, the burden falls to the government to show that the standard has not been satisfied. *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (Wash. 1995). The 0.6688 acres can adequately accommodate the number of dwelling units proposed, based on the future land use designation of the property. The private road proposed to serve the interior lots would be 20 feet in width, which is less than the minimum street width standards in subdivisions. However, the proposed CCRs prohibit parking within the private road, which indicates that the road width is generally adequate.

Public comment raised concerns about the adequacy of the proposed interior road for fire protection purposes. No information has been included in the record regarding the adequacy of the interior road for fire protection purposes. The PD ordinance provides for relaxation of zoning and subdivision standards, but does not providing for relaxation of building or fire code requirements. To the extent that the public comment relates to the impact of the proposal on the provision of fire protection services, it has been addressed in SEPA. To the extent the comments relate to compliance with the building and fire codes, that determination is made by appropriate city officials pursuant to those codes.

(5) Compliance with Chapter 10.24 SMC.

a. The purpose of Chapter 10.24 SMC 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. A planned development zone approved in accordance with Chapter 10.24 SMC may permit all proposed uses and developments that can be shown to be in conformance with the policies of the comprehensive plan. Approval of a planned development zone shall modify and supersede all regulations of the underlying zoning district. SMC 10.24.010. Section SMC 10.24.010(1) provides that planned development zones *may*:

Encourage flexibility in design and development that are architecturally and environmentally innovative, that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable utilization of the land than is possible through strict application of standard zoning and subdivision controls; provided that subdivision controls are applicable to planned development zoning only when a planned development application is combined with a proposal to divide land into lots;

These provisions were adopted through Ordinance 1779 in 2009, which specifically modified SMC 10.24.010(1), but makes no mention of SMC 10.24.010(2) through (8). It appears that the following provisions of SMC 10.24.010 are retained as examples of the intended use of the Planned Development zone based on the language of Ordinance 1779:

(2) Encourage land development that, to the greatest extent possible, preserves natural vegetation, respects natural topographic and geologic conditions, and refrains from adversely affecting flooding, soil, drainage, and other natural ecological conditions;

(3) Combine and coordinate architectural styles, building shapes, and structural/visual relationships that allows [*sic*] mixing of different land uses in an innovative and functionally efficient manner;

(4) Permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas and otherwise to better utilize the potential of the site;

(5) Promote an efficient use of land resulting in the adequate and economical provision of streets, utilities, and other infrastructure features;

- (6) Promote land developments that are compatible and congruous with adjacent and nearby land uses;
- (7) Allow unique and unusual land uses to be planned for and located in a manner that ensures harmony with the surrounding community;
- (8) Provide for the orderly development of mobile/manufactured home parks.

The ordinance must be construed as a whole. The statement of purpose in the ordinance must be construed as a specific standard for approval of a PD zoning district. Otherwise, based on *Sunderland*, the City would have the burden of showing why the PD should be denied. This would be an absurd result, given that the City has established a system of zoning regulations and standards that typically apply property development as an exercise of its police power—that is, to protect public health, safety and welfare. See SMC 10.02.030. The effective result would be that all other zoning standards would be guidelines, rather than controls, that could be suspended in the name of “flexibility.” Flexibility is not, in and of itself, a basis for approving a PD rezone. The flexibility must be tied to some public objective in order to justify a relaxation of otherwise applicable zoning (and subdivision) standards. Conversely, it is appropriate that the burden of showing that the City should allow a departure from the zoning standards as a matter of public interest should fall to the party proposing the relaxation of the standards. .

The applicant’s principal objective is to provide for private ownership of the individual dwellings. The individual lot ownership scheme is argued to provide a higher tax base. The rezone application’s program elements indicate that individual lot ownership will also result in better maintenance. Furthermore, the applicant asserts that the individual lot arrangement is responsive to neighborhood concerns about developing the property into multifamily residences rather than single family residences as is the general pattern in the area.

It may be true that dividing the parcels into smaller individual lots would increase the tax base and the applicant offers some evidence that tax rates are higher for properties it developed elsewhere in a manner similar to that proposed for the PD. From a public perspective, however, this would be an argument against providing for any multifamily rental properties at all. This issue is addressed by the assignment of land to primarily multifamily land use categories in the comprehensive plan. As a matter of policy, the City has identified a need for multifamily residential use. The subject property is zoned for multifamily residential use consistent with the comprehensive plans future land use goals. In addition, while the provisions in SMC 10.24.010(2) through (8) are essentially examples of use of the PD zone, there is no substantial evidence that the proposal would fit into one of the examples.

In adopting Ordinance 1779, the City Council desired to update the Planned Development Zoning District “through enhanced flexibility in design, architectural and environmental innovation that results in more efficient, aesthetic and desirable development of land.” The applicant asserts that the single family ownership of the lots would yield a more desirable development of land, since the neighbors do not want multifamily residential development on the property. Public comment indicates that the pattern of ownership would not respond to neighborhood concerns about the development pattern on the property. In addition, the proliferation of driveways across the sidewalk required along South 5th Street is not clearly more

efficient or more aesthetically desirable than the limited road approaches that would be allowable under the current zoning and subdivision standards. Under such circumstances, it is difficult to conclude that the PD would result in more desirable development on the property.

There is also no substantial evidence that any feature of the land itself suggests that the proposed rezone and subdivision would result in greater efficiency or aesthetic use from a public perspective. Similarly, no evidence has been presented to indicate a contrast in maintenance between the property as it would be developed and as it can be developed under current zoning. The mere fact that the proposed development would use different lot and street dimensions does not make the proposal more aesthetically appealing or more efficient. In short, without in any way disputing the appropriateness of the applicant's business objectives, there is an insufficient basis to conclude that benefits contemplated by the purpose statement in SMC 10.24.010 will be served by the approval of the proposed rezone.

b. Common open space in a planned development zone shall meet the following requirements:

- (1) The location, shape, size and character of the open space must be suitable for the planned development;
- (2) Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography and number and type of dwelling units to be provided;
- (3) Common open space must be suitably improved for its intended use, but common open space containing natural features may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for common open space and must conserve and enhance the amenities of the common open space in regard to its topography and unimproved condition.

SMC 10.24.080(a). As noted, where standards use general terms such as "suitable" or "appropriate," the burden lies with the City to show that the proposed project does not meet the standards. The applicant has provided a plausible landscaping plan for the proposed open space. It would provide at least some recreational opportunity and community benefit, though it is not clear that the benefit would be substantial. Accordingly, the open space proposed would address the requirements of SMC 10.24.080.

c. Applications for Planned Developments must submit a proposed subdivision map. The map must comply with subdivision standards except that block and lot design requirements may be reduced for good cause shown. SMC 10.50.041(d) and (e). In absence of a showing that the proposed PD zone is consistent with the ordinance, the subdivision block and lot designs reflected in the proposed plat map do not conform to the applicable design standards. A private access road is not consistent with SMC 10.50.041(d)(4). Lot widths and depths do not conform to SMC 10.50.041(e). Were the efficiency, desirability and aesthetic goals of SMC 10.24.010

served by the project, good cause for departure from subdivision standards might also be shown. Such is not the case.

From the foregoing findings, the Hearing Examiner makes the following

IV. CONCLUSIONS.

1. The Hearing Examiner has jurisdiction to conduct an open record hearing on the application for a PD rezone and associated subdivision, and make a recommendation to the Selah City Council.
2. While persons participating in the hearing process may be inconvenienced by the reopening of a hearing, inconvenience does not constitute prejudice to such parties.
3. Where there is a reasonable basis and useful purpose to be served by reopening a hearing, no succeeding appeal has been initiated or recommendation by the City council has been rendered, and the applicant consents to reopening the hearing, the Hearing Examiner may reopen a hearing, accept additional evidence concerning an application and issue a new decision or recommendation based on the consideration of the additional information.
4. The proposed rezone is consistent with the Selah Comprehensive Plan goals related to properties that have been designated for High Density Residential future land use, in that it not provides for open space. However, additional protections are required to assure the legal commitment of project properties to open space.
5. The applicant has not met it burden of showing that the proposed rezone promotes the purposes and requirements of Chapter 10.24 SMC that would allow the relaxation of otherwise applicable zoning regulations.
6. Because the application does not comply with Chapter 10.24 SMC, the proposed subdivision does not comply with block and lot design standards established in Chapter 10.50 SMC.
7. Based on the noncompliance of the application with Chapter 10.24 SMC, a recommendation of denial is appropriate.
8. Should the City Council approve the PD and preliminary plat notwithstanding the recommendation for denial, the approval should be subject to the following conditions as provided in the staff report and as modified based on the preceding findings:
 1. The existing duplexes will require modification into individual, detached single family dwellings, to qualify under the terms of the proposed planned development.

2. All design and/or improvement notations indicated on the preliminary plat are included herein as conditions of preliminary plat approval.
3. Final lot dimensions and lot area must substantially conform to the preliminary plat unless otherwise amended during the public hearing process.
4. All final plans and specifications for private improvements must be prepared by a Licensed Professional Engineer. Specifications for private improvements shown on the preliminary plat are minimum specification that may be superseded by conditions contained herein. Upon completion of construction and prior to final plat approval final "as-built" construction plans and a written certification by a Licensed Professional Engineer that said private improvements were completed in accordance with the construction plans. These documents must be submitted to the Public Works Department for storage.
5. Prior to May 26, 2011, or the recording of the final plat of "Fifth Street Estates" whichever comes first, the developer shall, in conformance with the conditions imposed during the approval of Short plat 913.79.08-02(2) construction the five (5) foot wide sidewalk adjacent to the short plat along both South 5th Street and Southern Avenue. If there is a failure to complete the required improvements the City will utilize the previous bond to complete the improvements.
6. Once sidewalk installation is completed the proponent shall submit a surety bond, or such other secure financial method acceptable to the City, in the amount of 15% of the cost of the sidewalk improvements as determined by the Public Works Director to be held for a period of two years from sidewalk completion to guarantee against defects in materials and workmanship.
7. The following note must be placed on the final plat map:

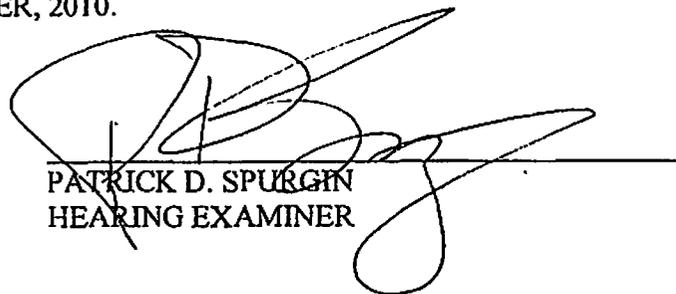
"The Fifth Street Estates Homeowners Association, and any grantees or assignees in interest, hereby covenant and agree to retain all surface water generated within the plat on-site, excepting surface drainage from driveways serving lots 1 through 6."
8. The "Declaration of Covenants, Conditions and Restrictions of 5th Street Estates" submitted with the application for rezone and preliminary plat shall be recorded simultaneously with the final plat map.
9. The "Declaration of Covenants, Conditions and Restrictions of 5th Street Estates" shall be amended to provide for a dominant easement in gross to be held, developed pursuant to the landscaping plan and maintained by the homeowners association and not subject other terms in the CCRs providing for changes to common areas. The easement language shall provide for appropriate intervention by the City to protect the recreational easement pursuant to SMC 10.24.090. Language to be included in the CCRs creating the recreational common open

space area conservation easement consistent with SMC 10.24.090 shall be submitted to the City of Selah for approval by the City Attorney prior to recording of the CCRs.

V. RECOMMENDATION.

The application by Torkelson Construction, Inc. to rezone property at 614 and 622 South Fifth Street from Multifamily Residential to Planned Development and to subdivide the same property into twelve lots, as specified in the application materials (File No. 912.79.10-01 and 914.79.10-01), should be DENIED.

DATED THIS 13th DAY OF SEPTEMBER, 2010.



PATRICK D. SPURGIN
HEARING EXAMINER

Exhibit J

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**BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF SELAH**



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

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I. Procedural History and Background Facts

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

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

A. Original Rezone Application and Plat.

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

1 property into 48 extremely small, single-family lots and two common, open-space
2 parcels. The application and SEPA Checklist was signed only by Carl and Candi
3 Torkelson as both the Applicant and Legal Property Owner, even though they did not
4 own the property at the time. Until December 24, 2014, the property was owned by
5 the Bowers family. Attached to this Brief as **Exhibit A** is a copy of the Deed,
6 pursuant to which the Torkelsons acquired title to the property. The application was
7 never processed, in part, because of the failure by the City to conduct any
8 environmental review under the State Environmental Policy Act (SEPA) and
9 opposition by the neighbors. From a review of the original application, it also appears
10 that the application was not complete (and still may not be complete) under the
11 applicable provisions of the Selah zoning ordinance (SMC 10.24.030 and SMC
12 10.24.050). Promptly upon learning of the original application, the Teskes, through
13 our office and most of the neighborhood, put the City of Selah on notice that they
14 were opposed to the proposed development. The original application (which now
15 apparently has been resurrected), was put on hold by the Applicant.

16
17 **B. Prior Short Plats and Variance.**

18 Instead of processing the rezone and dense plat up front through the detailed
19 review procedures of SMC 10.24 (the Planned Development zone), SMC 10.40, et
20 seq. (Selah's rezone ordinance), and conducting environmental review of the
21 development up front in accordance with Selah's SEPA ordinance (SMC Chapter
22 11.40, et seq.), which is now clear was always the Applicant's intention, the Applicant
23 tried to start the development and construction process through what it thought was a
24 more simple process; namely, applying for contiguous short plats to divide the
25 property into eight lots and requesting a variance to serve the eight lots by a small
26 private road instead of a city street as required by Selah's subdivision ordinance.
27 These applications were processed by the City, and opposed by our client and the
28 entire neighborhood under City of Selah File Nos. 915.45.14-02, 915.45.14-03,
29 913.45.14-02 and 913.45.14-04.

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

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

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13 **C. Potential Improper Construction.**

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

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

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

24
25 **D. Incomplete Environmental Review.**

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

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

3 No threshold decision required by SEPA for the project was made until
4 July 15, 2015. From a review of the record and discussions with Selah's SEPA
5 responsible official, Tom Durant, it appears Selah did not use the optional
6 consolidated DNS process in WAC 197-11-355 (as adopted by Selah in SMC
7 11.40.100). Instead, it appears to have accepted comments, using a 2-step process for
8 accepting comments on the environmental impacts of the proposal. The Teskes and
9 other affected landowners continue to object to the lack of comprehensive
10 environmental review up front, and believe this to be a procedural defect that taints
11 the pending application. Both the Applicant's and, in part, the City's own actions in
12 this matter were designed to defer environmental review on a very significant
13 development that is incompatible with the surrounding area until it is partially
14 complete and approved. Based on the size, density and proposed changes in
15 development standards, as well as the significant traffic impacts of the proposal,
16 Teskes believe mitigation measures to lessen compatibility conflicts should have been
17 made.

18 Neither the Applicant nor the City have required or proposed any
19 environmental mitigation measures designed to mitigate or lessen the significant,
20 adverse impacts on the surrounding property owners identified in their March 30,
21 2015, comment letter, and as outlined to the City and Applicant in prior hearings on
22 the variance. The Applicant and the City wrongfully seem to be processing this
23 development as if it is allowed outright, as long as maximum gross densities are not
24 exceeded. As the Examiner has recently noted in his *Somerset* decision, this is simply
25 wrong. Here, a final MDNS issued by the reviewing official did not include a single
26 mitigation measure to ameliorate the capability conflicts outlined by the Teskes in
27 their written comment letter. This is not surprising, since the same reviewing official,
28 Don Wayman, already had approved six more units in front of the Teskes' home in an
29 identical configuration to his planned development if he connects the separate
30 buildings by a nonstructural closet connector. Despite its obvious compatibility
31 conflicts, City staff to date has failed to impose any conditions to lessen the impacts
32 on the neighborhood. The Examiner and Council clearly have both the substantive
33 and SEPA authority to impose reasonable conditions on this development, and the
34 Teskes and the adjoining neighbors are asking that the City Examiner and City
35 Council do so if the development is not denied outright. Such conditions could

1 include, without limitation, site screening fences, increased setbacks, wider roads,
2 additional parking requirements, height restrictions on the units – especially those
3 closest to the adjoining homes – additional greenspace, and a lower density. A
4 responsible developer concerned with impacts on the neighborhood would have
5 proposed reasonable mitigation measures up front. However, this one presumes he is
6 entitled to build what he wants as long as it meets density requirements. Again, this is
7 an argument the Examiner already has rejected in the past, and should do so again.
8

9 II. Impacts of City’s Final Decision in Somerset II Development

10
11 As the Examiner (and City) is aware, the Examiner recently recommended
12 denial (a recommendation that was adopted by City Council) in a very similar
13 development. *See, e.g., In re Somerset II* (Selah File Nos. 912.42.14-05 and
14 914.42.14-04). In *Somerset II*, an owner/developer was requesting the City to rezone
15 4.7 acres of R-1 zoned property to Planned Development to create 24 smaller lots than
16 allowed by the zoning ordinance in an attempt to maximize the density allowed under
17 the Comprehensive Plan. In a well-written decision adopted by Council, the
18 Examiner recommended denial of the application without prejudice, noting many
19 legal issues and defects that are present in the pending application, including in no
20 particular order the following:

- 21 • Applications for planned developments must meet the procedural and
22 substantive standards set forth in the Planned Development provisions of
23 the code (SMC 10.24.030 and SMC 10.24.050), the criteria for rezones
24 (SMC 10.40.050(c) made applicable to minor rezones, as set forth in SMC
25 10.40.070(a)), and the Selah subdivision or platting ordinance (SMC 10.50,
26 et seq.). *Somerset II*, at 5.
- 27 • The residential densities set forth in the 2005 Selah Comprehensive Plan
28 are the maximum densities allowed, and **are not targets for owners and**
29 **developers**; and Plan policies encouraging economic growth are **not** the
30 same as maximizing residential densities (as is the Applicant’s
31 development intention in the present case). *Id.* at 6-7.
- 32 • Under the identical SMC provisions at issue here, an owner and applicant
33 cannot demonstrate Comprehensive Plan conformance where the proposed
34 density is inconsistent with the surrounding neighborhood and there is no
35

Mr. Torkelson stated he had read them.

Chairman Munson asked Mr. Torkelson if there were any comments he would like to make?

Mr. Torkelson stated that hopefully the changes would solve any loop holes so there would not be any more court cases.

Chairman Munson asked if along with the hearing there would be notices sent out to the area?

Mr. Davison stated yes within 600' of the proposal.

Commissioner Quinnell asked what regulates the lot size?

Mr. Davison stated whatever is approved.

Commissioner Quinnell asked if a Planned Development could be done in phases?

Mr. Davison stated yes.

Commissioner Quinnell asked if one of the phases was not completed properly?

Mr. Davison stated a stipulation would be put on the phases that if one is not done the project approval is revoked.

Chairman Munson called for further comments or questions. Hearing none he read the Findings and Decision. He read each item and the obtained a consensus of agreement with the Commission

This matter having come on for public hearing before the City of Selah Planning Commission on September 15, 2009, for the purpose of considering zoning ordinance text amendment #2009-01 to Selah Municipal Code Title 10, (Zoning Ordinance), Chapter 10.24 (Planned Development – PD zone.)

The members of the Commission present were Munson, Quinnell and Roberts.

Legal notification pursuant to Selah Municipal Code was given on the 30th day of August 2009. All persons present were given the opportunity to speak for or against the proposed text amendment.

COMPREHENSIVE PLAN FINDINGS

Comprehensive Plan Goals and Policies

1. The proposed zoning ordinance text amendment will or will not, as indicated below, further the following goals and their underlying policies of the 2005 City of Selah Urban Growth Area Comprehensive Plan.

2. GOAL

- a. Promote orderly growth

WILL FURTHER

- | | | |
|----|---|--------------|
| b. | Avoid incompatible land uses | WILL FURTHER |
| c. | Encourage the provision of housing to meet the needs of all segments of the community | WILL FURTHER |
| d. | Preserve natural resources | N/A |
| e. | Protect against flooding and drainage problems | N/A |
| f. | Maintain and improve air and water quality | N/A |
| g. | Maintain an efficient transportation system | WILL FURTHER |
| h. | Provide efficient and effective public services at the lowest possible cost | WILL FURTHER |

COMPREHENSIVE PLAN CONCLUSIONS

2. Based upon consideration of the above factors and balancing any conflicting goals and policies of the comprehensive plan, the proposed zoning ordinance text amendment is consistent with the goals and policies of the comprehensive plan.

CHANGED CIRCUMSTANCES

3. The Planning Commission finds the following changes in circumstances which justifies the proposed zoning ordinance text amendment:

The initial adoption and subsequent amendments made to, Selah Municipal Code Title 10, Chapter 10.24 does not include provide for expanded creativity, innovative design and flexibility of development standards that the current proposal includes . The Commission finds that with continued population growth and geographic expansion of the municipal boundary there is a need to provide for greater Planned Development zoning flexibility when developing property. Said text amendment is in furtherance of the public health, safety and general welfare of the people within the City of Selah .

NEED FOR THE PROPOSED TEXT AMENDMENT

4. The Planning Commission finds that within the City of Selah and within Selah Municipal Code Title 10 there is a demonstrated and/or recognized need to expand the opportunity and flexibility of the Chapter 10.24 (Planned Development zone).

PUBLIC OPINION

5. The public testimony that was offered was in support of the proposed text amendments.

ENVIRONMENTAL REVIEW

6. The Planning Commission finds that environmental review has been completed on the proposal and further finds that such environmental review was adequate.

CONTROLLING FACTORS

The Planning Commission determines that findings numbered 1 - 6 to be the controlling factors in its deliberations on the proposed zoning ordinance text amendment.

DECISION

The Planning Commission, based upon the aforementioned findings and controlling factors, finds that the proposed zoning ordinance text amendment is in furtherance of the public health, safety and general welfare of the people; therefore, the proposed zoning ordinance text amendment should be approved.

Motion to approve by: Quinell Seconded by: Roberts

Vote: 3 to 0

G: General Business

1. Old Business - None
2. New Business - None

H: Reports/Announcements

1. Chairman - None
2. Commissioners - None
3. Staff - None

I: Adjournment

Chairman Munson moved to adjourn the meeting, Commissioner Eagles seconded the motion. The meeting was adjourned the meeting at 6:55 pm.

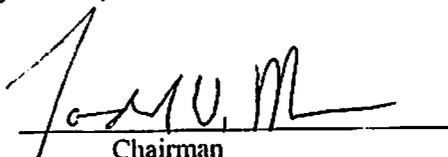

Chairman

Exhibit G

City of Selah
Council Minutes
March 23, 2010

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

A. Call to Order Mayor Jones called the meeting to order at 3:59pm.

B. Roll Call

Members Present: Keith Larson, Paul Overby, Summer Derrey, Kevin Jorgensen, Dave Smeback,
John Gawlik

Members Excused: John Tierney

Staff Present: Frank Sweet, City Supervisor; Jerry Davis, Fire Chief; Gary Hanna, Deputy
Fire Chief; Stacy Dwarshuis, Police Chief; Joe Henne, Public Works Director;
Dennis Davison, Community Planner; Jeff Hagler, Parks & Recreation
Director

C. Pledge of Allegiance

Councilman Jorgensen led the Pledge of Allegiance. Pastor Mark Greise led the opening prayer.

D. Agenda Changes

E. Public Appearances

F. Getting To Know Our Businesses

G. Communications

1. Oral

2. Written

H. Proclamations/Announcements

I. Consent Agenda

The Mayor read the Consent Agenda.

- * 1. Approval of Minutes: Council Meeting March 9, 2010
- * 2. Approval of Claims & Payroll:

Payroll Checks Nos. 68056 – 68152 for a total of \$135,646.14
Claim Checks Nos. 55845 – 55936 for a total of \$129,741.82

- * 3. Ordinance N – 1 Ordinance Amending the 2010 Budget for Repairs to Police Department Vehicles

Councilman Smeback moved and Councilman Larson seconded to adopt the Consent Agenda as read. By voice vote the Consent Agenda was adopted with Councilwoman Derrey abstaining.

J. Public Hearings

- 1. Public Hearing - Vacation of a Portion of East 3rd Avenue Street Right-of-Way Petitioned by the City of Selah

Community Planner Dennis Davison asked Council Members to turn to the map on Page 3 in their packet for J - 1 Public Hearing. He said the proposal is to vacate the north half of East 3rd Avenue which lies between the Villager Apartments and Treetop Warehouse 95. He said there are utilities in the south half. He said there will be no disruption of access to either of the properties. He said the Planning Commission recommends vacation.

Mayor Jones opened the Public Hearing. Seeing no one rise to speak, he closed the Public Hearing.

K. New Business

L. Old Business

- 1. Bus Shelters Proposal

Councilman Overby addressed Item L, Bus Shelters, noting we have received additional bids. He said the lowest of the bids came from Daytech out of Toronto, Ontario. He said the local bidder is ASAP, noting the Council previously discussed the value of dealing with businesses close to home.

City Supervisor Frank Sweet stated the bench is shorter on Daytech bid, which might be reflected in the lower cost estimate. He said purchasing locally helps to guarantee that any warrantee work will be done.

Councilman Overby said he would recommend the local provider, particularly since Yakima Transit is looking at ASAP too.

The City Supervisor noted that if Yakima Transit had not thought ASAP looked like a good provider, they would not have recommended them to the City of Selah.

Councilman Larson moved to approve the proposal of Councilman Overby and City Supervisor Sweet to purchase bus shelters from ASAP. Councilwoman Derrey seconded. Roll was called. Councilman Larson – yes; Councilman Overby – yes; Councilwoman Derrey – yes; Councilman Jorgensen – yes; Councilman Smeback – yes; Councilman Gawlik – yes. Support was unanimous.

M. Resolutions

N. Ordinances

Councilwoman Derrey recused herself from consideration of N - 1 and left the room.

1. Ordinance Vacating a Portion of E. 3rd Avenue Right-of-Way East of So. Wenas Avenue (File:919 67-10-01)

Community Planner Dennis Davison called attention to the Findings of Fact and asked the Council to adopt those first.

Councilman Overby moved and Councilman Jorgensen seconded to adopt the Findings of Fact. Roll was called. Councilman Larson – yes; Councilman Overby – yes; Councilman Jorgensen – yes; Councilman Smeback – yes; Councilman Gawlik – yes. Support of those present and voting was unanimous.

Councilman Larson moved approval of the Ordinance Vacating a Portion of E. 3rd Avenue Right-of-Way East of So. Wenas Avenue (File:919 67-10-01). Councilman Overby seconded. Roll was called. Councilman Larson – yes; Councilman Overby – yes; Councilman Jorgensen – yes; Councilman Smeback – yes; Councilman Gawlik – yes. Support of those present and voting was unanimous.

- * 2. Ordinance Amending the 2010 Budget for Repairs to Police Department Vehicles

Councilwoman Derrey resumed her seat on the Council.

3. Ordinance Adopting Amendments to Selah Municipal Code Title 10.50.041 (Subdivision Design Standards and Specifications)

Community Planner Dennis Davison stated that Ordinance N - 3 addresses changes to Selah Municipal Code proposed by the Planning Commission and the Fire Department. He explained that these changes originated as a result of going through the process of Planned Development proposals. He said City Code did not allow for private roads inside the City, but proposed Planned Developments for a gated community might well call for private streets. He emphasized that the changes would only allow private streets in Planned Developments and that Council has the power to place rules for planned developments. He said the Planning Commission has been working on this and has held four public hearings on these proposed changes. He said the Planning Commission's recommends adoption.

Councilman Gawlik called the Planner's attention to Section 5 sub-paragraph 8 dealing with cul-de-sacs. He asked what would guide the Public Works Director in determining the width and radius of industrial and commercial cul-de-sacs. He asked if it would be Fire Code.

The Community Planner responded that the Public Works Director would likely base his decision on the required turning radius for commercial trucks.

Councilman Gawlik referred to the next page, Section 3 paragraph (a) which references minimum right-of-way in alleys. He noted it makes no reference in the existing ordinance or the amendment as to what the surface of that alleyway should be. He asked if the City is asking for a paved or impervious surface.

The Planner responded that the standard is a minimum gravel surface and it has to be approved by the PC and the Council.

Councilman Gawlik asked what the City can do to have future developments to have surfaces paved where alleyways are going to be developed. The Planner said the City could just require that on the preliminary plan.

Mayor Jones noted that in the past three years the City has paved all of its alleys. He said he likes paved alleys, but they are harder to tear up to make utility repairs.

Councilman Overby asked if Councilman Gawlik is suggesting adding that as a requirement.

Public Works Director Joe Henne noted we've already torn up two of our paved alleys for sewer connections.

Councilman Gawlik said we're going to have the mandate for dust abatement and storm water, so we should be looking ahead at that in terms of our development.

The Community Planner said we have several private streets in town, but it's still going to be up to the Council to approve Planned Developments.

Councilman Jorgensen asked if part of that consideration would be whether those streets are connectors with other public streets. He suggested the Planner was primarily referring to gated communities.

Planner Davison gave the example that if someone wanted to put in a planned development and block off access up 16th Street, staff would obviously oppose that. When asked whether the Council should go ahead and adopt this or take it back to the Planning Commission, Mr. Davison said he would prefer adoption now. He said the Planning Commission can then work on amendments, and he will bring those back to Council.

Councilman Overby moved approval of the Ordinance Adopting Amendments to Selah Municipal Code Title 10.50.041 (Subdivision) Design Standards and Specifications. Councilman Larson seconded. Roll was called. Councilman Larson – yes; Councilman Overby – yes; Councilwoman Derrey – yes; Councilman Jorgensen – yes; Councilman Smeback – yes; Councilman Gawlik – yes. Support was unanimous.

O. Communications

1. Oral

P. Reports/Announcements

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

- a. Yakima Transit – February Billing and Ridership

Police Chief Dwarshuis renewed his invitation to Council Members to participate in Friday's training.

Parks & Recreation Director Jeff Hagler reported that the Yakima River Canyon Marathon this weekend, the 10th anniversary. He reported the hotel is full for this weekend.

Public Works Director Joe Henne reported that Public Works is still working on the control room for Well 8. He stated this week is the first reading for utilities. He said the East Goodlander Road Project is not dead; they are waiting to see if the new jobs legislation will be passed. He noted he wants to apply for 2nd round CMAQ money for dust abatement and is talking with the County about South Rushmore Road south of East Naches. He said the surface transportation money is coming back, so he's working on an application to reconstruct Park Ave from First to Third. He noted that unfortunately would eliminate some parking.

Councilman Smeback asked if those monies can be used to buy additional parking.

The Public Works Director said no, noting we're utilizing our own property for our own uses.

Mayor Jones stated they took out old flowering plum trees out at Palm Park, and he recommended taking out the pine too. He praised Joe's idea for tiering at Wixson.

Councilman Smeback asked when they will repair Crusher Canyon.

The Public Works Director said there was a lot of water, but they haven't seen all of the damage there yet. He said he would rather wait to minimize the amount of asphalt they'll need.

Community Planner Dennis Davison reported they have had 4 short plats approved in the last months. He said the Boundary Review Board has the Johnson-Snodgrass annexation. He noted Matson is all filed and recorded. He reported that once East 3rd Ave is recorded, that should facilitate SR 823. He concluded by saying the Planning Commission is working on more changes to the Code.

Councilman Gawlik reported having attended the COG meeting last week where the topic was EMS and data-sharing. He said an inter-agency agreement is forthcoming, and that represents an ongoing budgetary issue.

Mayor Jones reported he has been looking for a representative to Planning Commission. He said he approached two leaders from the South Selah neighborhood, and one refused, and he never heard back from the other. He reported that he recently appointed contractor Carl Torkelson to the Planning Commission. He said the Valley Mayors met the other night and the EMS Director was there and reported EMS would run an EMS levy a year early. In response to her report that they want to increase the amount of the levy, the consensus of mayors was not to raise it, rather to keep it at the same level for ten more years.

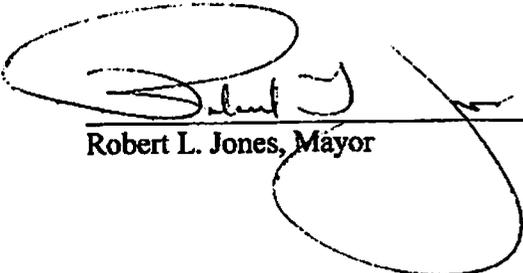
Q. Executive Session

No Executive Session was scheduled.

R. Adjournment

Council Member Larson moved, and Council Member Jorgensen seconded that the meeting be adjourned. By voice vote, the motion passed unanimously.

The meeting adjourned at 4:38pm.

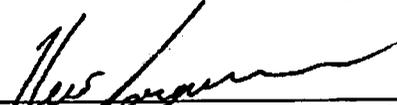


Robert L. Jones, Mayor

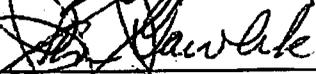
Keith Larson, Council Member



Summer Derrey, Council Member

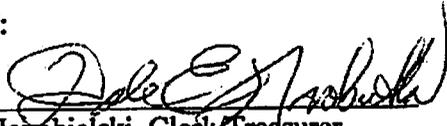


Kevin Jorgensen, Council Member



John Gawlik, Council Member

ATTEST:



Dale E. Novobielski, Clerk/Treasurer

Paul Overby, Council Member

(Excused)

John Tierney, Council Member



Dave Smeback, Council Member

Exhibit H

ORDINANCE NO. 1779

**AN ORDINANCE AMENDING SELAH MUNICIPAL CODE, TITLE 10,
CHAPTER 10.24 PLANNED DEVELOPMENT (PD) ZONING DISTRICT**

WHEREAS, the City Council desires to amend Selah Municipal Code (SMC) Title 10, Chapter 10.24 adopted in 2004 as Ordinance 1634; and;

WHEREAS, the City Council desires to update the Planned Development Zoning District through enhanced flexibility in design, architectural and environmental innovation that results in more efficient, aesthetic and desirable development of land, and;

WHEREAS, the City Council desires to adopt these amendments to protect the general welfare, health, and safety of the citizens of the City of Selah; and;

WHEREAS, amendment of SMC Title 10, Chapter 10.24 was reviewed and recommended for adoption by the Planning Commission after the Commission conducted a hearing on September 1, 2009; now, therefore:

**THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, DO ORDAIN AS
FOLLOWS:**

Section 1, Selah Municipal Code, Title 10, Chapter 10.24.010 Purpose, codified as Section 10.24.010 Purpose, is hereby amended to read as follows:

10.24.010 Purpose. A planned development zone approved in accordance with this chapter shall be a separate zoning district. Regardless of underlying zoning requirements, a planned development zone may permit all proposed uses and developments that can shown to be in conformance with the policies of the comprehensive plan. A planned development zone may be permitted at any location subject to the provisions of this chapter. Approval of a planned development zone shall modify and supersede all regulations of the underlying zoning district. An applicant may also file a subdivision or binding site plan application which, if filed, may be processed concurrently with the planned development zone application.

The purpose of this chapter, providing for the establishment of a planned development zone, 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. In addition, planned development zones may:

Section 2. Selah Municipal Code, Title 10, Chapter 10.24.010(1), codified as Section 10.24.010 (1), is hereby amended to read as follows:

- (1) Encourage flexibility in design and development that are architecturally and environmentally innovative, that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable utilization of the land than is possible through strict application of standard zoning and subdivision controls; provided, that subdivision controls are applicable to planned development zoning only when a planned development zone application is combined with a proposal to divide land into lots;

Section 3. Selah Municipal Code, Title 10, Chapter 10.24.030(1)(n), codified as Section 10.24.030 (1)(n), is hereby amended to read as follows:

(n) Proposed subdivision map, in the event the proposed planned development application is combined with a proposal to divide land into lots, identifying proposed lot configuration and size in square feet),

Section 3. Selah Municipal Code, Title 10, Chapter 10.24.050(1)(e), codified as Section 10.24.050 (1)(e), is hereby amended to read as follows:

(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),

Section 4. Selah Municipal Code, Title 10, Chapter 10.24.060(5), codified as Section 10.24.060 (5), is hereby re-numbered to read as follows:

- (6) Compliance with this chapter.

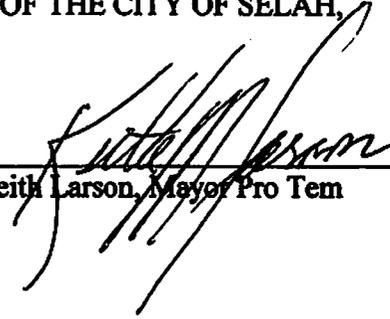
Section 5. There is herein enacted a new subsection 10.24.060(5) to the Selah Municipal Code, Title 10, Chapter 10.24.060 to be codified as Section 10.24.060 (5), to read as follows:

(5) Compliance with the city's subdivision code, if a proposed planned development application is combined with a proposal to divide land into lots;

Section 6. This ordinance is severable. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance.

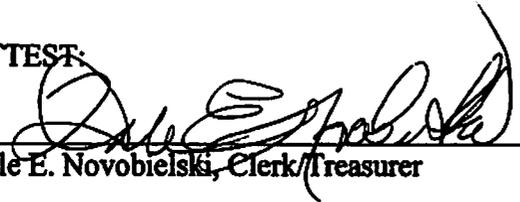
Section 7. This ordinance, being an exercise of the police power specifically delegated to the City Council, is not subject to referendum and shall be in full force and effect at 12:01 a.m. on the first day after its adoption and publication as provided by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 13th day of OCTOBER, 2009.



Keith Larson, Mayor Pro Tem

ATTEST:



Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:



Bob Noe, City Attorney

ORDINANCE NO. 1779

Exhibit I

**City of Selah, Washington
Office of the Hearing Examiner**

Application for a Rezone)	Selah File Nos. 912.79.10-01;
)	914.79.10-01
By Torkelson Construction, Inc.)	
)	HEARING EXAMINER
To Rezone Property at the 614 and 622)	RECOMMENDATION
South Fifth Street from Multifamily)	
Residential to Planned Development.)	
<hr/>		

I. INTRODUCTION.

Torkelson Construction, Inc. ("Torkelson") has applied to rezone and subdivide property at 614 and 622 South Fifth Street in accordance with Planned Development provisions of the Selah zoning ordinance. The name of the project proposal and subdivision is "Fifth Street Estates." The property has been partly developed into duplexes. Footings have been installed for further dwelling structures. The proposal would result in the subdivision of the existing 2 lots into 12 lots, providing for a single family residential structure on each of the lots. An open record hearing on the proposal was conducted June 23, 2010. The Hearing Examiner viewed the site on the same date. The Community Planner provided a staff report prior to the hearing, which is included in the hearing record. Public comment was provided by Jane Williams and Kathy Hoffert. The Community Planner also provided a copy of comment letter provided by Dave Hoffert for the record at the hearing (designated as Hearing Exhibit 1). The hearing record was held open for 7 days to allow the city staff and the applicant to provide additional responses to the Dave Hoffert letter.

On July 27, 2010, the Hearing Examiner issued a recommendation for denial of the application because it was not consistent with the comprehensive plan provisions for open space in High Density Residential areas, and did not meet the requirements of Chapter 10.24. SMC.. On July 28, 2010, Selah City Superintendent Frank Sweet sent a letter to the Hearing Examiner by telefacsimile that inquired as to whether the hearing in the matter could be reopened. By a letter dated July 29, 2010, the Hearing Examiner indicated as follows:

I am in receipt of your request to reopen the hearing in the referenced matter due to concerns that applicant may not have had notice of the necessity for providing substantial evidence to support findings regarding compliance with SMC 10.24.010. You also note that, understanding the necessity for such evidence, the applicant is prepared to provide it. I infer from your letter that the applicant supports reopening the hearing as the best means for putting such evidence in the record. Assuming the inference is true, and since substantial prejudice to any other party appears unlikely from reopening the proceeding, I believe that reopening the hearing will potentially improve the quality of the record and analysis supporting a

1 “project design, construction or amenities” warranting densities and lot
2 sizes different from the surrounding community. *Id.* at 7.

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

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

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

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

1 initial *Somerset II* development, that the Applicant failed in its burden to show that
2 the Planned Development involving extremely tall townhouse units on extremely
3 small substandard lots in a primarily low-density, single-family, residential
4 neighborhood meets the legal criteria under the Selah Municipal Code. In fact, the
5 Teskes would submit, based upon the application itself and the partially as-built
6 environment, that the Torkelson development under construction is even more
7 inconsistent with the required criteria and character of the neighborhood. He is
8 proposing a residential density of over 12 (48 lots on 3.97 acres) with an average lot
9 size around 3,000 square feet, where the minimum lot size under existing zoning is
10 9,000 to 21,780 square foot lots depending on the lot slope. The entire 48-unit
11 development is being proposed to be served by a 20-foot, private, paved road with
12 steep slopes that intersect Goodlander Road with site distance issues. Finally, almost
13 none of the normal development criteria for residential development are being met
14 (setbacks, lot size, impervious coverage, service by private street, et cetera). The
15 Torkelson's plat could not legally be approved under existing zoning.

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

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

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

3
4 **III. Legal Analysis**
5

6 As their March 30, 2015, comment letter and opposition in the related short
7 plats and variance application will attest, the Teskes’ clear position is the ill-
8 conceived Whispering View Estates development should not be allowed (whether as a
9 Planned Development or incrementally through a Class 2 Use Application). Because
10 of the direct and adverse impacts of this proposed development on their home and its
11 inconsistency with the lot size, aesthetics, density and character of the surrounding
12 neighborhood, the project should be denied. They believe no consideration should be
13 given to the construction already undertaken by the Applicant at its own risk, and
14 believe that current construction efforts and building permit applications also have
15 failed to meet adopted development standards. There are no mitigation measures
16 which can lessen the impacts on the surrounding R-1 zoned neighborhood. Simply
17 stated, 48 view-obscuring townhouses designed for rental – as opposed to owner-
18 occupied – use, served by a small, private street flowing onto a substandard arterial
19 (Goodlander Road) fails to meet development standards, and should be denied.
20

21 **A. Procedural Defects.**

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

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

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

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

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

12
13 **B. The Application Fails to Meet the Rezone Criteria.**

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

20 As noted in his *Somerset II* decision, the Examiner and City are required to
21 give provisions in the zoning ordinance effect based upon their plain meaning (*Dept.*
22 *of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (Wash.
23 2002)). City staff appropriately has given the rezone, plat and environmental review
24 separate numbers, and the City historically has reviewed Planned Development
25 applications using both criteria (*see, e.g., Somerset II and Torkelson Constr., Inc. v. S.*
26 *Selah Neighborhood Ass'n* (2005)). While as the Examiner noted, there are
27 significant overlap between the criteria, the City's rezone criteria includes some
28 additional required and very important items when a developer seeks to change the
29 character of the neighborhood, including (1) a requirement to show the **public need**
30 for the proposed change; (2) whether **substantial changes in circumstances** exist to
31 warrant the amendment; and (3) the **suitability of the property** in question for uses
32 permitted under the proposed zoning (*see, SMC 10.40.050(c)(3),(4)&(7)*). These
33 additional criteria are important because of the rezone applicant's burden to show
34 compliance with **all** applicable criteria using substantial evidence, whether it be major
35 or minor. *Henderson v. Kittitas Cnty.*, 124 Wn. App. 747, 845, 100 P.3d 842 (2004).

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

- 3 (1) there is no presumption of the validity favoring the action of rezoning;
- 4 (2) the proponents of the rezone have the burden of proof in demonstrating
5 that conditions have substantially changed since the original rezoning; [and]
- 6 (3) the rezone must bear a substantial relationship to the public health,
7 safety, morals or welfare.

8 *Ahmanne-Yamane, LLC v. Tabler*, 105 Wn. App. 103, 111, 19 P.3d 436
9 (2001); *Bjarnson v. Kitsap Cnty.*, 78 Wn. App. 840, 845, 899 P.2d 1290 (1995); and
10 *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573, P.2d 359 (1978).

11 While some jurisdictions and case law have softened the requirement to show
12 changed circumstances where an application clearly is consistent with the
13 Comprehensive Plan (*see, e.g., Save Our Rural Environment v. Snohomish Cnty.*, 99
14 Wn.2d 363, 370-71, 662 P.2d 816 (1983)), the City of Selah, through its zoning
15 ordinance and history have failed to do so. The Selah Municipal Code clearly
16 requires an applicant to show a substantial change in circumstances to warrant
17 amendment to the current designation or zone (SMC 10.40.050(c)(4)). In fact,
18 Council for the City of Selah previously has argued in Superior Court for Yakima
19 County, that a showing of changed circumstances is “pivotal” and contemplates a
20 showing of a change in the nature of area and how nearby properties are being put to
21 use. *In re Matson Fruit Company v. City of Selah*, Yakima Superior Court Cause No.
22 07-2-04502-2 and *S. Selah Neighborhood Ass’n v. City of Selah*, Yakima County
23 Superior Cause No. 05-2-03370-2. In the present case, the record will show
24 absolutely no substantial change in circumstances in the area surrounding the
25 proposed Whispering View Estates development that has now been improperly started
26 by the Applicant. The uncontroverted testimony and evidence at the hearing will be
27 that the area in and around the property remains R-1 zoned, suitable for low-density,
28 residential development. As the Examiner noted in *Somerset II*, whether for a lack of
29 changed circumstances under the rezone criteria or a failure to demonstrate Comp
30 Plan consistency and harmony with the surrounding area under the Planned
31 Development criteria, dense plats inconsistent with the neighborhood that do not meet
32 normal development standards should be denied.

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

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

14 Washington courts have long condemned “spot zoning”. *Smith v. Skagit Cnty.*,
15 75 Wn.2d 715, 743, 453 P.2d 832 (1969); *Save the Neighborhood Environment v. City*
16 *of Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984); and *Chrobuck v. Snohomish*
17 *Cnty.*, 78 Wn.2d 858, 872, 480 P.2d 489 (1971). The illegal spot-zone concept stills
18 survives case law today, even post-Washington’s Growth Management Act.

19 However, as will be set forth below, a proper application of the City’s rezone and
20 Planned Development criteria would essentially require the denial of the current
21 application and are designed to prevent illegal spot zones from happening. Again, the
22 Examiner recognized this concept in denying the *Somerset II* development when he
23 stated that Planned Development review is not merely a matter of ensuring the
24 proposal meets the limitations on maximum density, and a developer’s desire the
25 maximize density to the detriment of surrounding neighborhood does not meet the
26 Applicant’s burden.

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

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

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

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

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

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

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

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

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

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

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

24
25 **C. The Application Fails to Meet the Purpose and Criteria of Selah's**
26 **Planned Development Zoning District.**

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

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

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

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

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

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

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

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

13
14 RESPECTFULLY SUBMITTED this 28th day of July, 2015.

15
16 Halverson Northwest Law Group P.C.

17
18 By: Mark E. Fickes
19
20 Mark E. Fickes, WSBA #17427

Exhibit A

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

AFTER RECORDING MAIL TO:

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

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

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

Specs above this line for Recordors use only

STATUTORY WARRANTY DEED

File No: 4431-2354358 (MC)

Date: December 19, 2014

Grantor(s): **Danny O. Bowers and Patricia G. Bowers and Danny O. Bowers and Patricia F. Bowers, Trustees of the Bowers Family Holding Trust**

Grantee(s): **Carl L. Torkelson and Candi R. Torkelson**

Abbreviated Legal: **LOTS 1B, 2B, 3B & 4B, SHORT PLAT, REC. 7855130 AND LOTS 1A, 3A & 4A, SHORT PLAT, REC. 7855129, YAKIMA COUNTY**

Additional Legal on page:

Assessor's Tax Parcel No(s): **181425-33419, 181425-33421, 181425-33422, 181425-33423, 181425-33424, 181425-33425, 181425-33426**

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

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

PARCEL A:

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

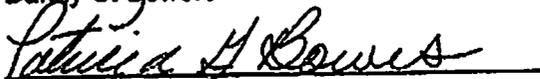
PARCEL B:

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

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



Danny O. Bowers



Patricia G. Bowers

Bowers Family Holding Trust



Danny O Bowers, Trustee



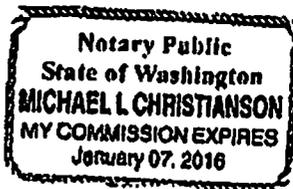
Patricia G Bowers, Trustee

STATE OF Washington)
)-ss
COUNTY OF Yakima)

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

Dated: December 27, 2014 

Michael L. Christianson
Notary Public in and for the State of Washington
Residing at: Yakima
My appointment expires: 11-7-16



APN: 181425-33029

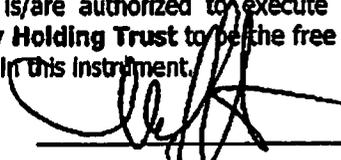
Statutory Warranty Deed
- continued

File No.: 4431-2354358 (MC)

STATE OF Washington)
)-ss
COUNTY OF Yakima)

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

Dated: December 23, 2014



Michael L. Christianson
Notary Public in and for the State of Washington

Residing at: Yakima
My appointment expires:

1/7/16

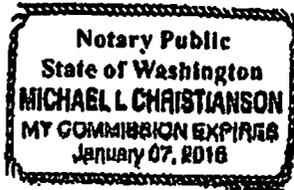


Exhibit B



CITY OF SELAH

Public Works Department

222 South Rushmore Road
SELAH, WASHINGTON 98942

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

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

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

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

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

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

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

- a. This proposal by itself does not have an adverse environmental impact provided that no additional multiple-family units shall be developed on any part of the property that is subject to the currently on-going environmental review until after it is completed.
- b. This proposal does not limit the choice of reasonable alternatives. As a class 2 use, multiple family residential developments are generally permitted in the R-2 zone provided that the density does not exceed 12 dwelling units per acre. As proposed, the application conforms to zoning ordinance development standards.

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



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

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

HALVERSON | NORTHWEST LAW GROUP

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)

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

*Also Oregon Bar Member
+Of Counsel

Dear Mr. Durant and Mr. Wayman:

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

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

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

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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

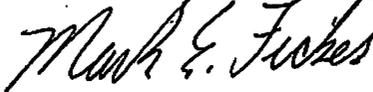
City's Notice, the proposal (a 6-unit, multi-family project) is, in reality, six, illegal, single-family residences connected by a non-structural artifice (one that does have adverse environmental impacts and does limit the choice of reasonable alternatives). If a Class 2 use was approved, Torkelson 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

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

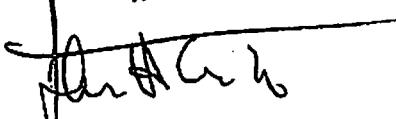
We are asking you to deny the proposed Class 2 use of a lot currently zoned as R2 in the Torkelson proposed "Whispering View Estates" project on Goodlander Road. We oppose this Class 2 use in R2 on the grounds that this usage is entirely inconsistent with the surrounding neighborhood of mostly single 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,



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

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

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

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

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

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

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

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

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

Sincerely,

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

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March 30, 2015

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

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

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)

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

*Also Oregon Bar Member
+Of Counsel

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.

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Sunnyside Office: 910 Franklin Avenue, Suite 1 | PO Box 210 | Sunnyside, WA 98944 | p) 509.837.5302 | f) 509.837.2465

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

March 30, 2015
City of Selah Planning Department
Attention: Thomas R. Durant, Community Planner
Page 5

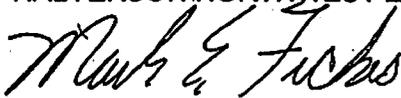
designed for rental, instead of owner occupied use, which looks like a development more appropriate for Seattle's east side.

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

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)
)
By Zuker-Sample Development, LLC.)
)
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.)
_____)

Selah File Nos. 912.42.14-05;
914.42.14-04

**HEARING EXAMINER
RECOMMENDATION**

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 of 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.

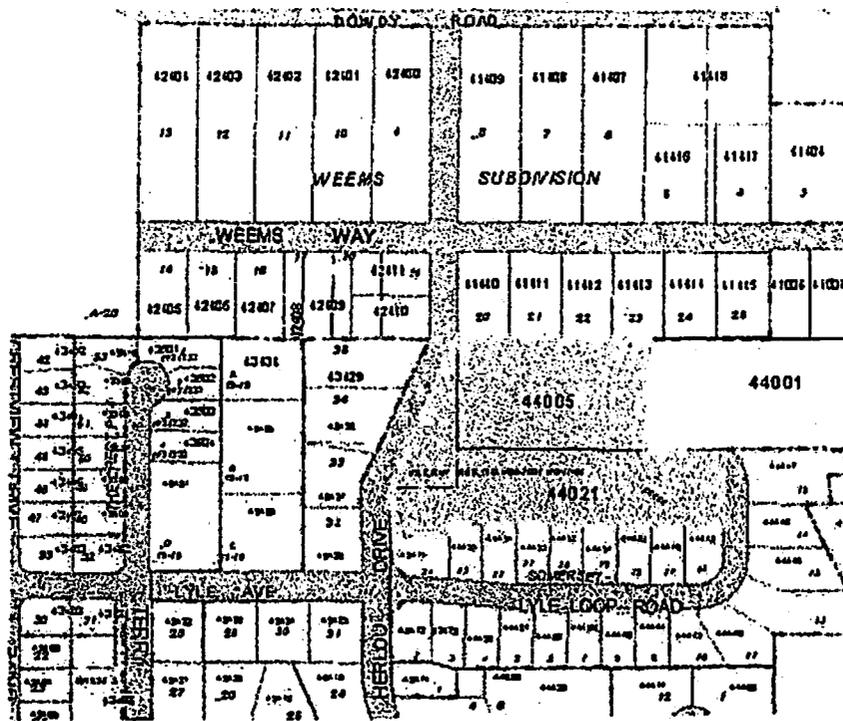
The project would develop vacant property in the midst of a single family neighborhood, some of which is within city limits, and some outside city limits. Public comments raised concerns about the effect on neighborhood character from the proposed small lot sizes, the use of a private road easement to 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

¹
http://yakimap.com/servlet/com.esri.estimap.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



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 be 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 of 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 were 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.
Yakima, WA 12-24-08

via hand delivery to Kenneth Harper via email & US mail to Robert Noy

Date
Jori Duran

NIMLITSON
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

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FILED

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

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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,)

NO: 08-2-01628-4

ORDER ON SOUTH SELAH
NEIGHBORHOOD
ASSOCIATION'S LAND USE
PETITION ACT APPEAL
(with Judge Hackett)

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.)

ORIGINAL

1 On December 16, 2008, this matter came on regularly before the Court for oral
2 argument on Land Use Petition filed by South Selah Neighborhood Association, a
3 non-profit association, Kathleen Fountaine; Dave and Kathy Hoffert, husband and
4 wife; Art and Phyllis Johnson, husband and wife; and Michael and Michelle Turner,
5 husband and wife (collectively "SSNA"). Petitioners were represented by James C.
6 Carmody; Respondent City of Selah was represented by Robert F. Noe; and
7 Respondent's Torkelson Construction, Inc., a Washington corporation, Joe Kelly
8 Construction, LLC, a limited liability company, Carl Torkelson and Joe Kelly
9 (collectively "Torkelson") were represented by Kenneth W. Harper.
10

11
12 In rendering its decision, the Court reviewed and considered the entire record
13 on appeal, including:

- 14 a. SSNA's Petition for Review dated April 29, 2008;
- 15 b. Stipulation and Order Setting Case Schedule dated June 2, 2008;
- 16 c. Stipulation and Order Setting Case Schedule dated August 13, 2008;
- 17 d. Petitioner's Opening Brief dated September 16, 2008;
- 18 e. Response Brief of Respondent's Torkelson Construction, et al dated
19 October 21, 2008;
- 20 f. Motion to Supplement the Record of Respondents Torkelson and Kelly
21 and Supporting Memorandum dated October 21, 2008;
- 22 g. City of Selah Joinder in the Response Brief of Torkelson Construction,
23 et al dated October 22, 2008;
- 24 h. Petitioner's Reply Brief dated October 31, 2008;
- 25 i. Certified copy of the Administrative Record submitted by City of Selah;
26 and
27 j. Verbatim Report of Proceedings for Hearings Before Hearing Examiner
28 Pat Spurgin.
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1 Having thoroughly reviewed the entire LUPA-related record, including, but not
2 limited to, the specific entries noted above, as well as the argument of legal counsel,
3 this Court finds and concludes as follows:

- 4 1. This court has jurisdiction over the subject matter and parties.
5
6 2. City of Selah's environmental threshold determination as set forth in
7 Mitigated Determination of Non-Significance (MDNS) dated July 20, 2007 is not
8 clearly erroneous and Hearing Examiner's Decision on this issue shall be affirmed.

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

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

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

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

25 "Multi-Family" Dwelling is defined as follows:

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

31 (b) Torkelson originally proposed construction of twenty-four (24)
32 single family residences within a planned unit development. The residence structures
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35

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

5
6 (c) Buildings were connected by a non-structural causeway that
7 appears cosmetic and has no structural utility. The connecting artifact serves no
8 structural purpose or utility and is not designed to improve liveability of the separate
9 building.

10
11 (d) Hearing Examiner erroneously interpreted the zoning ordinance.

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

17
18 5. Pursuant to RCW 36.70C110(4), Petitioners are entitled to
19 reimbursement of costs associated with preparation of the verbatim transcript in the
20 sum of ^{Four} ~~Nine~~ ^{Eighty Seven} ~~Hundred Seventy Four~~ Dollars (^{44,870.00} ~~974.00~~). *RNT*

21
22 6. Petitioners are entitled to award statutory costs and attorney's fees.

23 IT IS SO ORDERED.

24
25 DONE IN OPEN COURT this ^{JAN} 9 day of December, 2008.

26
27 Robert N. Hackett, Jr.
28 Honorable Robert N. Hackett, Jr.
29 Yakima County Superior Court Judge

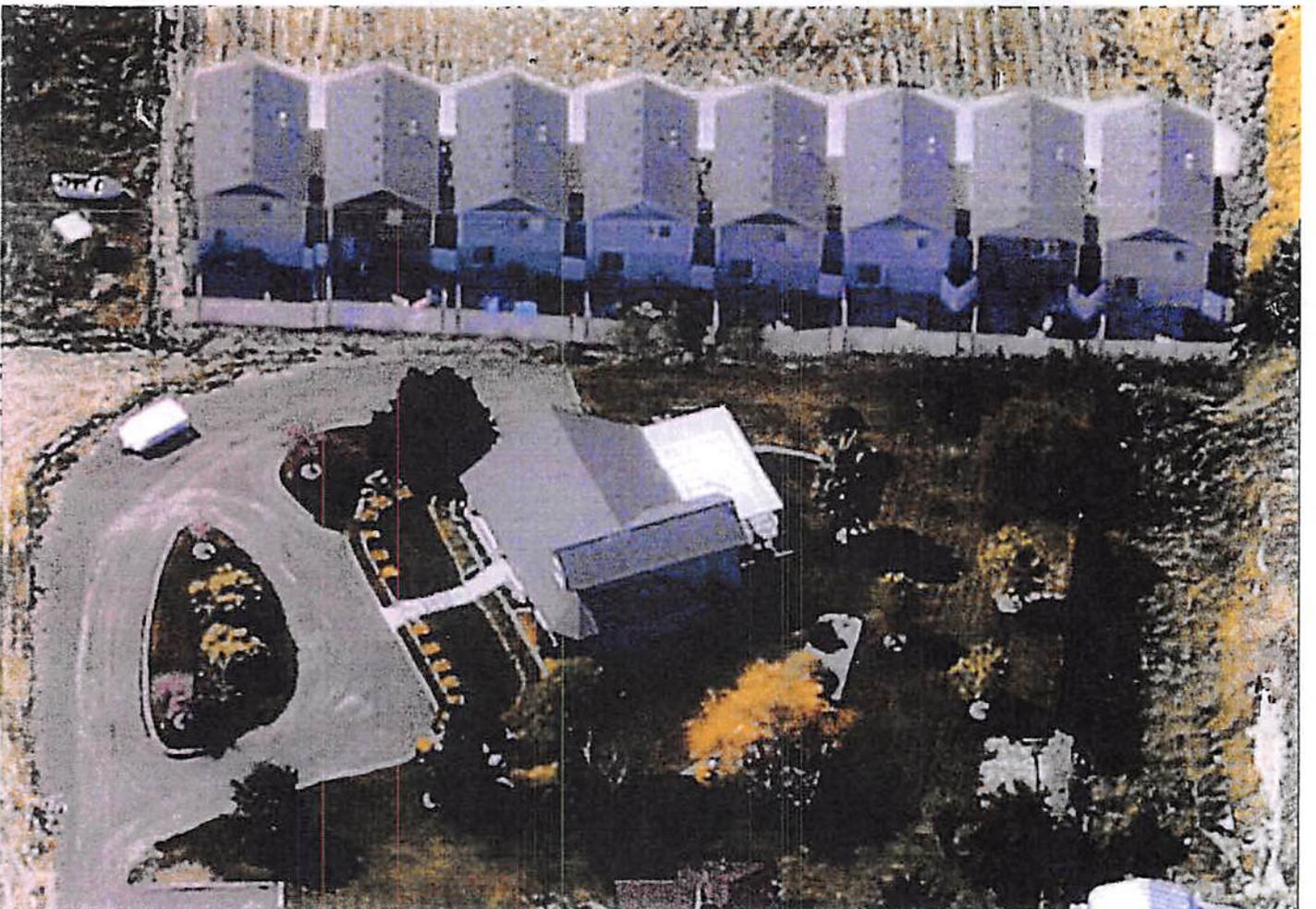
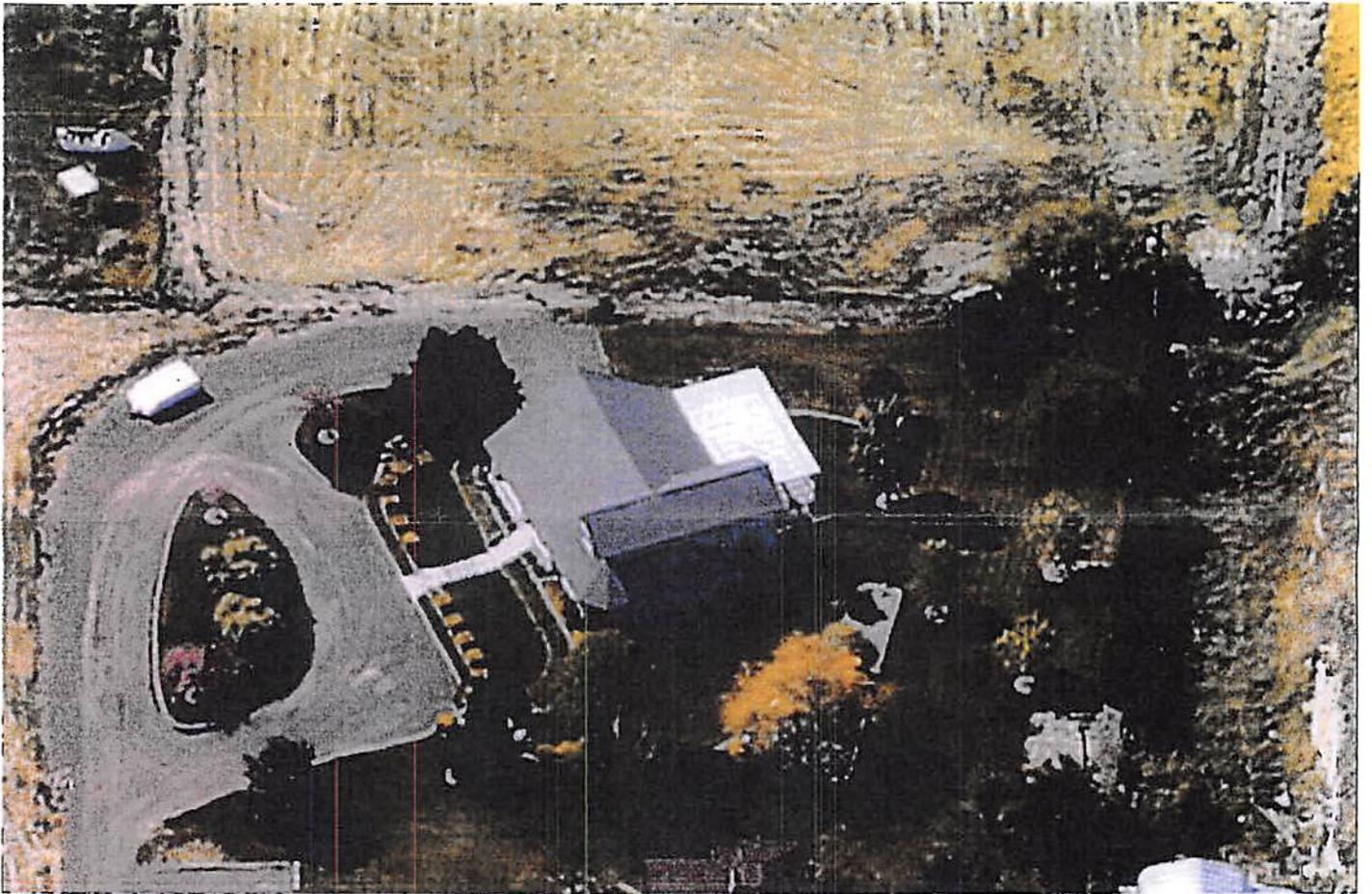


Exhibit HE 10

RIGHT ELEVATION

SCALE: 1/4" = 1'-0"

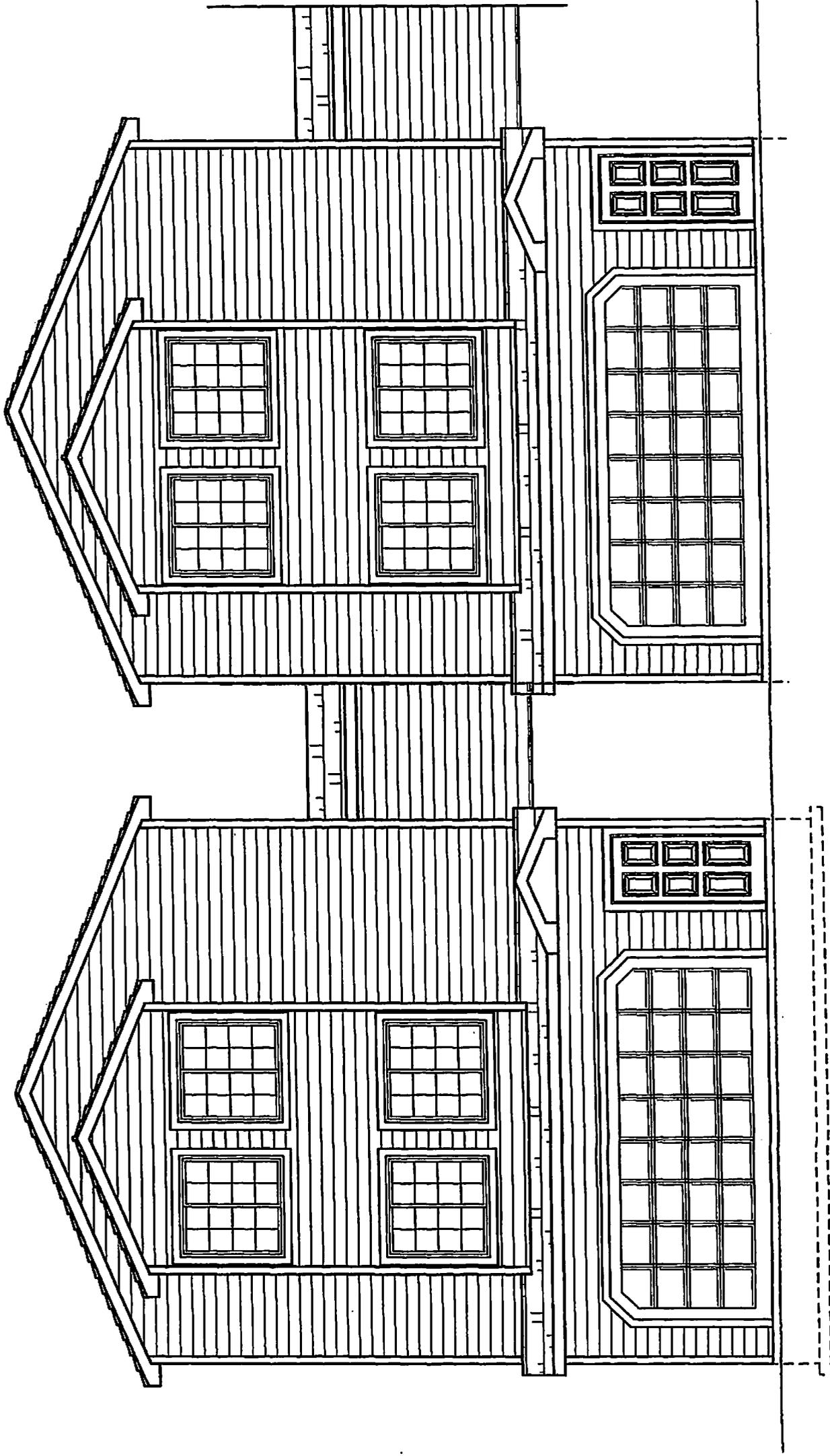
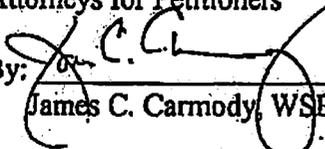


Exhibit #611

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Presented by:

VELIKANJE HALVERSON, P.C.
Attorneys for Petitioners

By: 
James C. Carmody, WSBA 5205

Copy received, notice of presentation
waived:

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

By: _____
Kenneth W. Harper, WSBA #25578

CITY OF SELAH
Attorney for Respondent City of Selah

By: _____
Robert F. Noe WSBA 19730

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CITY OF SELAH

FINAL ADMINISTRATIVE APPROVAL BY THE ADMINISTRATIVE OFFICIAL

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

FILE NUMBER: 926.45.15-02

ISSUE DATE JUNE 19, 2015

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

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

PROPERTY OWNER: Carl & Candy Torkelson

PROJECT ADDRESS: Bowers Drive

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

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

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

FINDINGS

1. In accordance with Selah Municipal Code, SMC 10.06.020(2), Class 2 administrative uses are generally allowed in the zoning district. However, the compatibility between a class 2 use and the surrounding environment cannot be determined in advance and must be reviewed. The Class 2 use may be conditioned in order to ensure compatibility and compliance with the provisions of the zoning district and the goals and policies of the comprehensive plan. If a Class 2 application cannot be adequately conditioned it shall be denied.
2. Conditions may be imposed by the reviewing official in granting a Class 2 application to accomplish the following as specified by SMC 10.06.060:
 - a. Comply with any development standard or criteria for approval in Title 10 or other relevant provisions of the Selah Municipal Code.
 - b. Mitigate material impacts of the development, environmental or otherwise.
 - c. Ensure compatibility of the development with existing neighboring land uses and assure consistency with the intent and character of the zoning district.
 - d. Ensure that proposed structures and areas are surfaced, arranged and screened in such a manner that they are compatible with and not detrimental to existing or reasonable expected future development of the neighborhood, or resource uses consistent with the comprehensive plan.
 - e. Achieve and further the intent, goals, objectives and policies of the comprehensive plan and Title 10.
 - f. A time limit to commence, complete the authorized action, or both must be prescribed by the administrative official. The granting of a one-time extension of either or both dates is allowed.
3. The proposed multiple family residence consists of six three story units connected by an extension of the second floor containing a closet for each of five units. Each unit is to have three bedrooms and two baths. Access is from a 26 foot wide access and public

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

4. The density of the proposal based on six units on the .53 acre subject property is 11.25 dwelling units per gross residential acre, conforming to the maximum of 12 units per acre as required by the zoning ordinance and comprehensive plan.
5. Surrounding land uses consist of a mixture of single-family residences on lots one half to one acre in size, vacant land, pasture and large landscaped yards. There is a residence to the east on a 1.68 acre parcel fronting on Lancaster Road, two residences to the north with access from Lancaster Road by private road, a residence to the west with access from Selah Loop Road by private road and a church to the west. To the south are 7 one-half acre lots with six similar single family residences and a large open sided agricultural building.
6. Zoning consists of Two Family Residential (R-2) within the City Limits on the north side of E. Goodlander Road and One-Family Residential (R-1) to the south. The R-2 zoned area includes the site, the seven short plat lots to the south and three other parcels fronting on E. Goodlander to the southeast and southwest, but not adjoining the subject property. The zoning of adjacent properties outside of the City Limits is One Family Residential (Yakima County – R-1). This includes all of the adjoining parcels except for the short plat lots to the south. Zoning is generally consistent with the future land use designations from the comprehensive plan. The R-2 zoned areas are designated Moderate Density Residential. The R-1 zoned areas are designated Low Density Residential, except for one lot on Lancaster Road which is designated Moderate Density Residential, the church to the west and Selah High School, to the south, designated Quasi-Public Open Space. Carlon Park is designated 'Park' by the Comprehensive Plan.
7. The existing density of the R-2 zoned areas to north of E. Goodlander Road including the subject property is 1.3 dwelling units per acre. With the project, the density increases to 1.8 units per acre. Including the pending applications with the City for this and surrounding properties, the density increases to 7.2 units per acre. The density of the R-1 zoned areas bounded by E. Goodlander, Selah Loop and Lancaster Roads (excluding property owned by the church) is 1.1 dwelling units per acre. The combined R-1 and R-2 zoned areas have a density of 1.2 units per acre, which increases to 1.4 units per acre with the project and 3.6 units per acre with the project and the other pending residential applications.
8. The purpose of the R-2 Two Family Residential zoning district is to provide for single or two-family residential development where urban governmental services are available or will be extended at no public cost (SMC 10.14.010). Specific intents of the R-2 zone are

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

9. The minimum lot size in the R-2 zone where municipal sewer and water is being provided and where slopes are less than 10 percent is 9,000 square feet. Proposed development must assure adequate setbacks, buffering of adjoining uses and sensitivity to physical features. Multiple family dwellings up to 12 dwelling units per acre (DUA) are permitted Class 2 uses by Table 10.28A-5. There are no regulatory notes given for this use.
10. The subject parcel is 0.53 acre or 23,223 square feet, meeting the minimum lot size. Setback, lot coverage and other zoning ordinance standards are as follows:
 - a. Front setback: 30 feet from south property line centered in the private access easement.
 - b. Side setbacks: 8 feet from east and west property lines.
 - c. Rear setback: 20 feet from the rear property line.
 - d. Maximum lot coverage is 50% (buildings only).
 - e. Building height is 35 feet.
 - f. Any dumpsters must be screened from view from any public right-of-way.
11. All of these standards are met or exceeded. The proposed front setback is 30 feet from the south property line, which is also necessary in order to provide parking that meets minimum dimensions. The proposed side setback is 14 feet from the west property line and over 75 feet from the east line. The proposed rear setback is 23 feet. Proposed lot coverage is 20.6%. Proposed building height is 32.5 feet. Since there is no public right-of-way in the immediate vicinity, it is unlikely that dumpsters would be visible from one.
12. Off-street parking requirements for a multiple family dwelling with six or more dwelling units is 1.5 spaces per unit. The applicant is proposing to use 20 foot by 24 foot concrete driveways at each unit for parking. This is the equivalent of two spaces per individual unit that are 12 feet wide, rather than 10 feet, exceeding both the standards for the number of spaces and parking space width. Required surfacing is two-inch thick asphalt on aggregate base or equivalent and grading and drainage so that no water drains across

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

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

- a. No additional units of the concurrently proposed Planned Development may be constructed until environmental review is completed.
- b. All of the development standards of Title 10 are being met by the proposed application. Subdivision standards are not being considered since this Class 2 application is being developed on existing platted lots and does not require approval under the subdivision ordinance.
- c. If the Planned Development were not completed, the proposed use could stand alone; it does not require the completion of additional units on the adjoining properties in order to function.
- d. The maximum number of dwelling units accessing E. Goodlander Road would be 20, which does not require a second access point under the Fire Code.
- e. Class 2 Review gives the administrative official the authority to impose conditions to the extent that compatibility impacts are identified.

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

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

categories:

- a. Impacts including traffic, inadequate roads and facilities, incompatibility and inconsistency with surrounding residential areas.
 - b. Concerns about project density and objection to rentals.
 - c. Consistency of project design with definition of multiple-family residence.
 - d. Procedural issues including the consideration of this application simultaneously with Planned Development and SEPA decision.
 - e. Legality of private roads and existing dwellings and the extent to which a variance previously issued for the short plats is limited to specific use or number of units.
16. The intent of the Moderate Density Residential land use designation of the comprehensive plan is to provide predominantly moderate density residential development of up to 12 dwelling units per gross acre, with clustering of dwelling units to preserve open space, steep slopes, drainage ways, etc. Predominant land uses are two-family, townhouse, condominium dwellings with a mix of single-family and multiple-family residences. The mix of housing types is to be limited by the maximum density and zoning standards will assure compatibility (Selah Urban Area Comprehensive Plan pp. 33-34).
17. Applicable comprehensive plan policies include encouraging new residential development to approximate existing residential densities and housing mix levels (HSG 2) and encourage the combined net density of all residential development to remain at present levels (HSG 2.1). Minimize the negative impacts of medium and high-density residential projects on adjacent low density residential areas but encourage mixed use/density projects (HSG 3). Encourage new residential construction to be compatible with existing residential development (HSG 4).
18. The project is consistent with the maximum density of the moderate density residential designation and with SMC 10.28. Although the predominant use of this mostly undeveloped area of R-2 zoning is not yet two-family residential, multiple family residential is considered to be usually permitted. Zoning standards intended to assure compatibility are being met.
19. Incompatibility concerns as indicated by comment letters include the use of private roads, view obstruction, building height and architecture and project density.
20. The private road exists, having been approved by an earlier decision that was not

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

21. View obstruction and architectural style is not regulated by zoning regulations or addressed by the comprehensive plan except in a very general way. Both are subjective issues and attempting to regulate them without clear standards can result in inconsistent decisions. This is especially the case for view obstruction given the topography of much of the City. The existing buildings and those proposed by this application meet building height and all setback standards.
22. Density, although characterized as high by some of the comment letters, is within the definition of moderate density and conforms to the comprehensive plan designation and zoning standards. It is higher than the existing net density of surrounding areas, but two factors should be considered: The Moderate Density Residential land use designation of the subject property is intended to have a higher density than the Low Density Residential designation of surrounding areas, and the surrounding areas are not yet fully developed, with several vacant parcels and areas on existing residential parcels that are large enough to be subdivided into smaller lots.
23. Some comment letters contend that the variance and previously approved short plats do not allow the development of these units or anything more than a duplex on the subject lot. However, the Planning Commission decision recommending approval to the City Council and City Administrator contains the following note:

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

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

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

CONCLUSIONS

1. The project complies with the developments standards of Title 10, Selah Municipal Code. In particular setback, height and lot coverage standards are met.
2. The project is consistent with the intent and character of the R-2 zone and the Moderate Density comprehensive plan designation including density.
3. Surfacing, arrangement, screening of proposed structures and improvements are compatible with existing and reasonably expected future development.
4. The present and future needs of the community will be adequately served by the proposed development. The community as a whole will benefit rather than being injured. In particular, the proposal helps to meet a need for more upscale, affordable rental housing in the community.

DECISION

Class 2 Review of a multiple-family residential development consisting of five dwelling units attached to an existing single-family dwelling is approved subject to the following conditions:

1. An access easement shall be established along the south property line for the proposed "temporary fire turnaround" on the boundary between the lot and the adjoining lot to the south prior to issuance of a certificate of occupancy.
2. Proposed parking areas (i.e., residential driveways) shall be constructed of concrete as proposed by the application. The "temporary fire turnaround" shall be hard surfaced, 20 feet in width and constructed to Fire Code requirements. It has been assigned the name "Whisper Way" for addressing purposes. A sign bearing that name shall be installed to assist emergency responders in finding and identifying the road.

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

A copy of this Notice of Administrative Approval of a Class 2 Use by the Administrative Official is being mailed to the applicant and all persons responding to the initial Notice of Development Application. This decision will be final and conclusive unless appealed by 5:00 P.M., June 29, 2015 in accordance with Selah Municipal Code, Chapter 21.11. Any appeal filed must contain specific factual objections and be accompanied by the \$330.00 appeal fee. Contact Thomas R. Durant, Community Planner at (509) 698-7365 to read or ask about appeal procedures.

ADMINISTRATIVE OFFICIAL: Donald C. Wayman

POSITION/TITLE: City Administrator

ADDRESS: 222 South Rushmore Road, Selah, Washington 98942

DATE: June 19, 2015

SIGNATURE: 

HALVERSON | NORTHWEST LAW GROUP

June 26, 2015

Selah City Council
115 West Naches
Selah WA 98942

HAND DELIVERED

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

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

*Also Oregon Bar Member
+Of Counsel

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

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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.

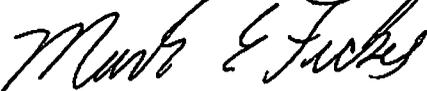
- 8) The Class 2 use constitutes an illegal phased development where the project Applicant and Owner is trying to do incrementally what is and should be subject to more advance or detailed review under SEPA, and the planned development, rezone and plat ordinances of the City.
- 9) The decision on the 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

MEF:tia

Enclosure

CC: Dale Novobielski, Selah City Clerk
John and Helen Teske

HALVERSON | NORTHWEST LAW GROUP

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)

Raymond G. Alexander
Adam K. Anderson
Alan D. Campbell
J. Jay Caroff
James S. Elliott
Robert N. Faber
Mark E. Fickes
Carter L. Field
Frederick N. 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

Dear Mr. Durant and Mr. Wayman:

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

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

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

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Sunnyside Office: 910 Franklin Avenue, Suite 1 | PO Box 210 | Sunnyside, WA 98944 | p) 509.837.5302 | f) 509.837.2465

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

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

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

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

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

Procedural Defects and Request for Consolidated Processing

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

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

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

The Torkelson Class 2 Application Should be Denied.

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

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

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

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

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

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

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

- (1) The proposal is not compatible and not in harmony with the surrounding area because it allows way too many units (in this case, six units on a 23,000 square foot lot), it blocks the view and the units tower over adjoining residences, its development is served by substandard streets, and the box-like townhouse structures specifically designed for non-owner occupied use simply do not fit in with the neighborhood at the requested density and design;
- (2) The proposed development violates many goals and objectives of the Comprehensive Plan, including failure to encourage economic growth (Objective LUGM 3), failure to upgrade the character of existing residential neighborhoods (Objective HSG 1), and failure to encourage residential development to approximate existing residential densities and housing mix levels (Objective HSG 2);
- (3) The public facilities and roads are inadequate, as dense development such as the one proposed should be served by public streets, not substandard private roads, and at its obviously intended full build-out, road improvements along Goodlander will not be adequate, including sidewalks, bus stops and the lack of a turning lane; and
- (4) Present and future needs of the community (which includes the surrounding neighborhood) will not be adequately served by the development, and the community as a whole will be harmed rather than benefited, in express contradiction to the required finding to approve a Class 2 review. See SMC 10.06.040(8)(A).

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

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

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

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

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

This applicant has little hope of receiving approval of a rezone and planned development in light of the Somerset II decision, and because this even denser and more incompatible development fails to meet the review criteria. He should not be able to achieve the same results through a series of related Class 2 use applications. In this case, the City itself has admitted that this Class 2 Application is “part of a larger project consisting of a series of actions ...”. This is why an upfront environmental review should be completed, the Application should be reviewed and consolidated with the pending applications for a rezone and planned development and, ultimately, should be determined following an Examiner’s recommendation and decision by the City Council. Development standards should be applied based on the whole project, not 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

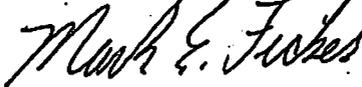
City's Notice, the proposal (a 6-unit, multi-family project) is, in reality, six, illegal, single-family residences connected by a non-structural artifice (one that does have adverse environmental impacts and does limit the choice of reasonable alternatives). If a Class 2 use was approved, Torkelson 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 fall 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

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

Hearing Examiner
Exhibit 9 Approximate
size 18" X 36" is to
Large for the current
Binder.

IT will be displayed on a
tripod at Council

July 31, 2015

Patrick Spurgin

Hearing Examiner

Selah Planning Department

Dear Mr. Spurgin,

I'm writing this letter to present issues that I believe are inconsistent with the Selah Municipal Code and the Comprehensive Growth Management Act. Because of these inconsistencies and conflicts, it is my belief that the Whispering View Estates development should be denied and directed to stop work immediately pending a new development application for the properties.

The Development has serious question of ownership at the time Carl Torkelson's applied for the Development on January 8, 2014. His signature (and his wife's) are witnessed or identified as the legal owner of the properties. In April of 2014 a survey was commissioned by Dan Bowers of the properties, the legal ownership is registered to Dan Bowers at that time. The false information presented at the time of application is cause to suspend the permits for up to one year then they have to be applied for again. SMC 10.06.080

When the question of an illegal application (January 8, 2014) was brought to the attention of the Selah City Council an investigation was conducted by Selah City attorney, Bob Noe. In Mr. Noe's investigation, Carl Torkelson is quoted as saying he "verbally withdrew the application a couple months later". Mr. Noe and the city have accepted that as factual. Since there is only one application form filled out for Whispering Views Estates and one SEPA form filled out this is the one that was withdrawn. No other forms are filled out or referred to in Mr. Noe's investigation. I believe the current Hearing and process lacks a basis for consideration since there is no active completed development application. Please review his complete Whispering file for a second completed application other than the January 8, 2014 that was withdrawn.

The Illegally proposed development is being constructed on a street design that is unable to control auto traffic safely within the development. The road design is primarily a 20' hard surface with no curbs, gutters or sidewalks. As a matter of public safety, the sited structures are only 4' off this road surface and absent sidewalks where is the foot traffic allowed to walk especially in banked up snow conditions. These units will generate approximately one child per unit and they must walk out of the development to board a bus, the private road designation won't allow buses on the private roads. The application also lacks a profile of proposed road construction, absent

Exhibit 12

this I also have serious reservations about the safe grade of the private roads as they intersect with East Goodlander.

In an earlier Hearing Examiner's decision (Somerset II) that you, Mr. Spurgin, identified a SMC 10.50.043 and SMC 10.50.044 which requires a sidewalk on all residential streets. While Mr. Torkelson is calling these roads private they are still residential streets and subject to the safety, health and welfare obligation on the city to require all residential streets to have a curb, gutter and a five foot sidewalk. The current construction and proposed design has to be changed to reflect required curbs and sidewalks on at least one side of every residential street in the proposed development.

The development is being applied for as a Planned Development. This requires a public need documentation under a change of circumstance. No credible data is provided for such a public need in the application. Additionally the development is inconsistent with protection of and in harmony with the neighboring uses as described in Comprehensive Plan objectives. This development of three story town houses does not approximate the surrounding neighborhood in any way or manor.

Without curbs and gutters there are no design plans for keeping runoff ground water on site. The intersection at East Goodlander will be an open intersection area for water on the private roads to leave the development and in winter it will become an icing problem on East Goodlander which directly serves Selah High School and has the highest traffic count of any connector road in Selah.

SMC 10.50.016 (g) Any land to be subdivided that has a slope of 20% or more....."the sub divider shall furnish soils data to the city administrator. If conditions warrant control measures to control slide, erosion or other similar problems, the sub divider shall be responsible for the design, installation and expense of any device or corrective measure, subject to approval of the city administrator." Retaining walls with engineering should be provided before the preliminary development approval is granted.

There are many areas within the development that have extreme cuts with no engineered retaining walls and there has already been considerable fill in low areas that have received no compaction and testing. The fill areas may exist under both roads and residences. These practices need to be tested and corrected.

While the proposed development identifies open space it appears to be very limited as to the activities that can be sited in them. Please notice the open space on the South East corner of the development. The slope is extreme making the area unusable. Since no retaining walls are identified in design or plan this leaves one to assume the developer has chosen to believe the

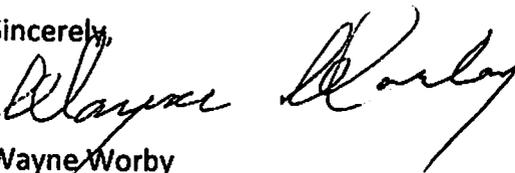
requirement of open space to not be important. It is a requirement still yet to be addressed adequately.

The maximum density applied for in the R-2 medium density is at twelve living units per acre. The total units the acreage will generate is less than 48, since Selah Municipal Code doesn't allow for rounding up the 3.96 acres will not generate a 48 residences. The maximum allowed is 47 living units.

Selah School District is already close to or at capacity on several campuses. No mitigation of additional student load is provided by the development application. This density will add nearly two classrooms of students to the population. Impact fees should be imposed to address this impact on our school system.

Please consider these observations when rendering your decision. Again, my position is to deny the 48 units development design, stop work on the existing structures pending a new development application that will adequately conform to the Comprehensive Growth Management Act and the Selah municipal Codes.

Sincerely,



Wayne Worby

200 Weems Way

Selah, Washington 98942



CITY OF SELAH

115 West Naches Avenue
Selah, Washington 98942

Phone 509-698-7328
Fax 509-698-7338

May 18, 2015

Wayne Worby
200 Weems Way
Selah, WA 98942

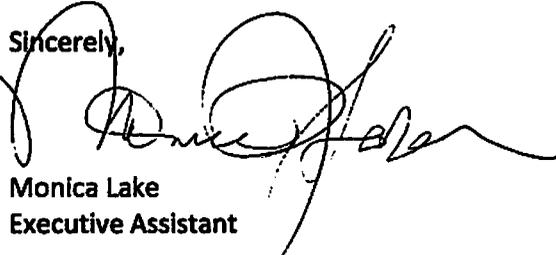
Re: Records Request dated May 13, 2015

Dear Sir:

The City of Selah is in receipt of your request for records referenced above. The following is provided in response in compliance with the provisions of RCW 42.56.

There are no records responsive to this request. The action taken was done verbally; no paperwork was filed.

Sincerely,


Monica Lake
Executive Assistant

Cc: File

Exhibit HE 13



July 30, 2015

RE: Whispering View Planned Development (PD) on Goodlander Road.

Due to the fact that I have to work full-time and that these meetings are always held at a time that is not feasible for most working people to attend I want to present my opinion of this Planned Development.

Living my entire life in Selah it is very important to me in the way growth of the city is handled. These 3 story homes are not even ADA qualified and no one in their middle years on up will live in a home where there are two flights of stairs to climb. No one in a wheelchair can live in these homes.

I oppose this 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 property. These homes were never considered by the developer to be compatible with the surrounding homes. They are not compatible and do not match the surrounding area.

These homes are very obtrusive to the eye and lowers the quality of life of those that live next to them. The least the developer could have done is put in one story homes along the bordering property lines then move to two story homes with the three story homes along Goodlander Road. This would have made the whole PD a lot more attractive at least for those who have lived there prior with property bordering the development. Their view is now being cut off and instead they are having to look at the backs of these matchbox houses.

Then there is the personal safety of children living in a development such as this. No yards for children to play in pushing them to small green spots that are sloped to much for meaningful play unless you are sliding on a sled in the snow.

A PD for 48 homes is ridiculous on this size of property. There is also the problem of added cars. They say that the average cars owned is 1.5, not so. Everyone of my neighbors own two cars and some even more. That alone may add up to 96 more cars coming and going up to several times a day on that road and with a High School of teenage drivers using the same road. The study they did of the road, half of the time the strips counting the cars were not attached so there was no really "honest" readout of how many cars actually use the road. Of course this worked to the developer's benefit.

These PD's need to be put out of the city completely and not where houses are currently built. It is not fair to the homeowner/taxpayer.

Our school system is overtaxed with students right now and where are we going to be adding these extra students that 48 homes will bring in...100 plus kids? I and many other

homeowners are tired of paying more and more tax bonds for the schools and something's gonna give and I don't think it's going to be the taxpayer any more.

There have been many instances of conflict of interest in not only this but in other Planned Developments in our city. Lies and more lies. When the Duplex was built behind my neighbor and my home we were told there would be a 6' privacy fence built so that the new owners would not just be looking straight into our homes. The fence was never built. The Duplex sits higher than our homes and yes, they can look straight into our homes.

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

Drive down No. 10th Street off of Fremont, look at those houses jammed up on the right hand side. This is not a neighborhood anymore. It looks terrible and these homes the same developer shoved into the tiny lots (multiple homes on a lot) are offensive to the eye.

In the winter how are they going to stop coming off that hill on ice?

How about fire trucks and the ability to get to the top of the property line if there is a fire? What if it is in winter? What about responder units needed for an emergency up at one of the homes at the top of the hill? Is the road capable and able to be navigated with 2 or more cars in each home parked in the driveway...hopefully with no one visiting them or having a party.

I sincerely urge you to look upon and listen to all that you hear from the people who really care about Selah and how negatively this development is looked upon by many of us that are tired of all that has gone on with this developer and all the misleading statements that have been presented by him.

Thank you for your attention in this matter that is of utmost importance to many of us living in Selah.

Sincerely,

Diane L. Underwood
Abdul Maroof
402 No. 9th Street
Selah, WA 98942
509.480.0899 and 509.480.0897 (cell)



**PUBLIC DISCLOSURE
REQUEST FOR INFORMATION FORM**

SECTION I - REQUESTOR TO COMPLETE

NAME OF REQUESTOR - PLEASE PRINT <i>Wayne Morby</i>		ADDRESS <i>200 W. Main Street</i>	PHONE <i>697-7840</i>
IS REQUESTOR A CONTRACTING AGENCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		RECORD(S) BEING REQUESTED (Titles of records): <i>I want to view Court Records complete file on whispering willow estate</i>	
RECORD CONCERNING INDIVIDUAL OTHER THAN REQUESTOR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, WHO IS RECORD CONCERNING? <i>Don't know</i>	
ACTION REQUESTED: <input type="checkbox"/> INSPECTION <input type="checkbox"/> COPY <input checked="" type="checkbox"/> OTHER		AUTHORIZING DOCUMENT (ATTACH IF POSSIBLE) <input type="checkbox"/> NOTARIZED RELEASE <input type="checkbox"/> SUBPOENA <input type="checkbox"/> OTHER (Specify)	
SIGNATURE OF REQUESTOR			

SECTION I
MICHIGAN DOCUMENT

DATE: 04-14-2015	TIME: 10:15 am	SELAH EMPLOYEE RECEIVING REQUEST: (NAME) <i>Kyle Hurst</i>
REQUIRED: POSITIVE IDENTIFICATION AND/OR NOTARIZED AUTHORIZATION FROM THE PERSON FOR RELEASE OF INFORMATION		

SECTION II

REMARKS: <input type="checkbox"/> YOUR REQUEST HAS BEEN RECEIVED AND IS BEING PROCESSED. <input type="checkbox"/> THE RECORD YOU REQUESTED IS ENCLOSED. PAYMENT FOR COPIES RECEIVED. <input type="checkbox"/> THE RECORD YOU REQUESTED IS AVAILABLE. PLEASE SUBMIT \$ _____ PAYABLE TO THE CITY OF SELAH. <input type="checkbox"/> WE NEED ADDITIONAL INFORMATION TO RESPOND TO YOUR REQUEST. (SEE REMARKS) <input type="checkbox"/> THE RECORD YOU REQUESTED IS EXEMPT FROM INSPECTION UNDER THE LAW. SEE REASON FOR DENIAL BELOW. <input type="checkbox"/> WE DO NOT HAVE THE RECORD REQUESTED. (SEE REMARKS)	
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SECTION III

FINAL AGENCY RESPONSE <input type="checkbox"/> ALLOW ACCESS <input type="checkbox"/> DENY ACCESS	NOTIFICATION OF FINAL AGENCY RESPONSE: DATE: _____ TIME: _____
SIGNATURE OF PERSON ALLOWING/DENYING REQUEST: _____	WHO NOTIFIED: (NAME) _____
DOCUMENTATION OF REASON FOR DENIAL: _____	NOTIFIED BY: <input type="checkbox"/> BY MAIL <input type="checkbox"/> IN PERSON WHERE MAILED: (ADDRESS) _____
I CERTIFY THAT NOTIFICATION OF FINAL AGENCY RESPONSE WAS CARRIED OUT AS STATED ABOVE: SIGNATURE OF NOTIFYING CLERK _____	
I CERTIFY THAT NOTIFICATION OF FINAL AGENCY RESPONSE WAS RECEIVED BY ME IN PERSON: SIGNATURE _____	



PUBLIC DISCLOSURE
REQUEST FOR INFORMATION FORM

SECTION I - REQUESTOR TO COMPLETE

RECORD REQUEST	NAME OF REQUESTOR - PLEASE PRINT <i>Wayne Worky</i>	ADDRESS <i>200 Wernz Way Sel</i>	PHONE <i>697 4040</i>
	IS REQUESTOR A CONTRACTING AGENCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
	RECORD(S) BEING REQUESTED (Titles of records): <i>I want to review Carl Jankelson's development application for Granddunes</i>		
	RECORD CONCERNING INDIVIDUAL OTHER THAN REQUESTOR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
	IF YES, WHO IS RECORD CONCERNING? (PRINT)	AUTHORIZING DOCUMENT (ATTACH IF POSSIBLE) <input type="checkbox"/> NOTARIZED RELEASE <input type="checkbox"/> SUBPOENA <input checked="" type="checkbox"/> OTHER <i>Don't know</i> (Specify)	
	ACTION REQUESTED: <input checked="" type="checkbox"/> INSPECTION <input type="checkbox"/> COPY <input type="checkbox"/> OTHER		
SIGNATURE OF REQUESTOR <i>Wayne Worky</i>			

SEC II	DATE: <i>03-26-15</i>		REQUIRED: POSITIVE IDENTIFICATION AND/OR NOTARIZED AUTHORIZATION FROM THE PERSON FOR RELEASE OF INFORMATION
	TIME: <i>1:03 pm</i>		SELAH EMPLOYEE RECEIVING REQUEST (NAME) <i>KYLIE HURI</i>

SEC III	<input type="checkbox"/> YOUR REQUEST HAS BEEN RECEIVED AND IS BEING PROCESSED. <input type="checkbox"/> THE RECORD YOU REQUESTED IS ENCLOSED. PAYMENT FOR COPIES RECEIVED. <input type="checkbox"/> THE RECORD YOU REQUESTED IS AVAILABLE. PLEASE SUBMIT \$ _____ PAYABLE TO THE CITY OF SELAH. <input type="checkbox"/> WE NEED ADDITIONAL INFORMATION TO RESPOND TO YOUR REQUEST. (SEE REMARKS) <input type="checkbox"/> THE RECORD YOU REQUESTED IS EXEMPT FROM INSPECTION UNDER THE LAW. SEE REASON FOR DENIAL BELOW. <input type="checkbox"/> WE DO NOT HAVE THE RECORD REQUESTED. (SEE REMARKS)		
	REMARKS:		
	FINAL AGENCY RESPONSE <input type="checkbox"/> ALLOW ACCESS <input type="checkbox"/> DENY ACCESS	NOTIFICATION OF FINAL AGENCY RESPONSE: DATE: _____ TIME: _____	
	SIGNATURE OF PERSON ALLOWING/DENYING REQUEST:	WHO NOTIFIED: (NAME)	
	DOCUMENTATION OF REASON FOR DENIAL:	NOTIFIED BY: <input type="checkbox"/> BY MAIL <input type="checkbox"/> IN PERSON WHERE MAILED: (ADDRESS)	
	I CERTIFY THAT NOTIFICATION OF FINAL AGENCY RESPONSE WAS CARRIED OUT AS STATED ABOVE: _____ SIGNATURE OF NOTIFYING CLERK		
I CERTIFY THAT NOTIFICATION OF FINAL AGENCY RESPONSE WAS RECEIVED BY ME IN PERSON: _____ SIGNATURE			



CITY OF SELAH

115 West Naches Avenue
Selah, Washington 98942

Phone 509-698-7328
Fax 509-698-7338

MEMORANDUM

To: Wayne Worby, Complainant

Cc: Mayor John Gawlik
Carl Torkelson, Subject of Complaint

From: Robert Noe, Selah City Attorney 

Date: April 29, 2015

Re: Complaint against Planning Commissioner (Carl Torkelson)

Mr. Worby I was asked to investigate your allegation that Mr. Torkelson submitted an application for a re-zone wherein he falsely asserted that he was the owner of the property which was the subject of the application. I have spoken with you, spoken with Mr. Torkelson, and I have reviewed several documents including documents included within the Planning Department / Public Works files and title documents and an Addendum to Real Estate Purchase and Sale Agreement.

A simple chronology of events resolves this matter in favor of a finding the Mr. Torkelson did not knowingly submit documents to the Planning Department containing false information with the intent to mislead or defraud the Planning Department, the City or anyone else. Mr. Torkelson was provided with written authorization to act on behalf of the property owner, Daniel Bower, prior to the time that the re-zone application was submitted.

You alleged that Mr. Torkelson submitted an application for a re-zone of the subject property (2 lots) from R-1 to Planned Development and falsely indicated that he owned the subject property back in January 2014. I confirmed that there was such an application submitted to the Planning Department in January 2014. About 2 months later, Mr. Torkelson withdrew that application.

In May 2014 Mr. Bower submitted a short plat application for the same subject property (2 lots) and sought to subdivide the 2 lots into 8 lots. That application was processed and the subdivision granted.

In Feb. 2015 Mr. Torkelson sought to have the lots (now 8) re-zoned from R-1 to Planned Development. Title records show that the property (the 2 lots and now the 8 lots) were owned by Daniel Bower until December 2014, at which point title was transferred to Torkelson.



Based on title documents and on the applications submitted to the City, it appears that Mr. Torkelson did not own the subject properties in early 2014 when the first application for a re-zone was submitted. Developers, however, often submit development applications on behalf of their clients/customers as part of the service they provide to such customers. When you and I spoke I asked whether you knew whether this was the case. You indicated that you did not. Mr. Torkelson indicated that Mr. Bower had in fact authorized him to act on his behalf back in January 2014 when the first re-zone application was filed. I asked that Mr. Torkelson provide me with documentation verifying this.

At the March 24, 2015 City Council meeting Mr. Torkelson produced a document purporting to show that Mr. Bower had provided him with authority to submit development applications on his behalf dated in late 2013 (prior to the January 2014 re-zone application). I reviewed the document at that time and it appeared to be consistent with that which Mr. Torkelson was representing.

Following the meeting, I asked that Monica Lake provide me with a copy of the document that Mr. Torkelson had submitted to the City Council. Monica said the copy wasn't retained and that the City did not have copy available for me. Since that time Monica has been working with Mr. Torkelson to obtain a copy of the document. The document, an Addendum to a Real Estate Purchase and Sale Agreement between Daniel Bower and Torkelson Construction, Inc., was recently produced¹.

Based on the chronology, the fact that the parties (Torkelson and Bower) were clearly working together and that there was an intention evidenced by purchase and sale agreement that Torkelson would at some point purchase and become the owner of the property, and based on the document (the Addendum) showing Mr. Bower authorizing Mr. Torkelson to act his behalf as the owner of the subject property in November 2013 (before the January 2014 re-zone application was submitted), it does not appear that Mr. Torkelson engaged in any wrong doing and that he had not submitted false documents to the City with the intent to mislead or defraud the City, the Planning Department or anyone else.

Based on the foregoing, no further action will be taken concerning this matter.

¹ The document is an Addendum to a Purchase and Sale Agreement between Bower and Torkelson Construction, Inc. In the Addendum Mr. Bower provides as follows: "I, Dan Bower, authorize Carl Torkelson, as President of Torkelson Construction, Inc. to act on my behalf as the owner of 207 E. Goodlander, Selah WA 98942 (Parcel #181425-33029 & 33030). This is solely for obtaining any and all permits and any and all other documents that may be needed for construction and development of said property." The Addendum was executed on November 3, 2013.



PRELIMINARY PLANNED DEVELOPMENT OF WHISPERING VIEW ESTATES

LEGAL DESCRIPTION

AREA OF PROPOSED SUBDIVISION IS 172,315 SQ. FT./3.96 ACRES.

PERCENTAGE OF LAND COVERAGE BY ASPHALT ACCESS ROADS AND DRIVEWAYS IS 35.4%.

UTILITY INDICATES PUBLIC SERVICE EASEMENT. USAGE WILL INCLUDE BUT NOT BE LIMITED TO SEWER, WATER, POWER, IRRIGATION, NATURAL GAS, TELEPHONE, CABLE, TELEVISION, ETC.

STORM WATER GENERATED BY NEW IMPERVIOUS SURFACES WILL BE COLLECTED AND TREATED ON SITE.

UTILITY CABLES, TELEPHONE CABLES AND GAS MAINS ARE TO BE LOCATED WITHIN THE PUBLIC SERVICE EASEMENTS. THE INDIVIDUAL UTILITY LOCATIONS WILL BE DETERMINED AT THE TIME OF CONSTRUCTION.

THE PROPERTY AND ADJACENT CITY OF SELAH PROPERTIES ARE ZONED SINGLE-FAMILY RESIDENTIAL. ADJACENT PROPERTIES WITHIN THE CITY ARE ZONED R-1 SINGLE FAMILY.

AN OVERFLOW PARKING AREA EASEMENT WILL BE DEDICATED TO THE FINAL PLAT MAP OR PROVIDED FOR IN THE DEVELOPMENT INSTRUMENTS.

PARCEL A

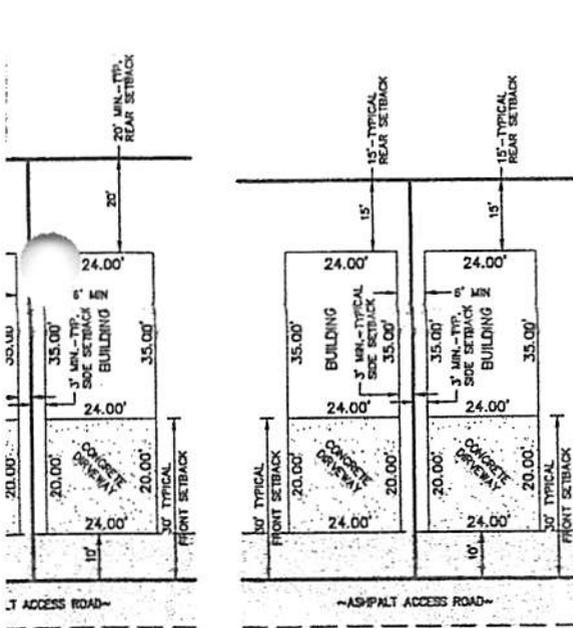
THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 18 EAST, W.M. LYING EAST OF THE YAKIMA VALLEY TRANSPORTATION COMPANY'S RIGHT OF WAY AS DISCLOSED BY DEED RECORDED IN VOLUME 125, PAGE 136, RECORDS OF YAKIMA COUNTY, WASHINGTON;

EXCEPT THE EAST 420 FEET THEREOF;

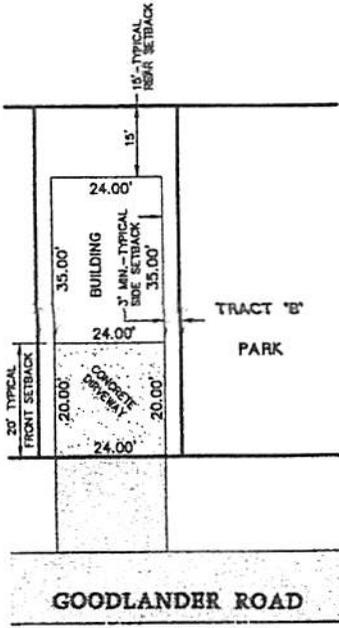
AND EXCEPT THE SOUTH 25 FEET FOR COUNTY ROAD RIGHT OF WAY.

PARCEL B

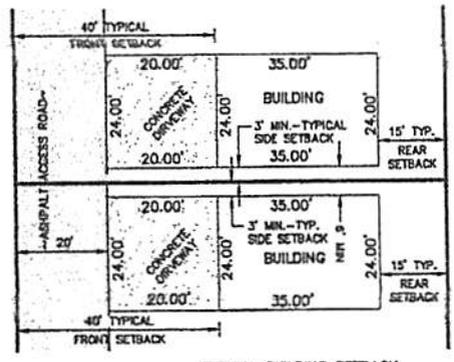
A STRIP OR PARCEL OF LAND 50 FEET WIDE THROUGH, OVER AND ACROSS THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 18 EAST, W.M. IN YAKIMA COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: TO WIT COMMENCING AT A POINT 20 FEET NORTH AND 635 FEET EAST OF THE SOUTHWEST CORNER OF SECTION 25, TOWNSHIP 14 NORTH, RANGE 18 EAST, W.M.; THENCE NORTH A DISTANCE OF 666 FEET; THENCE EAST A DISTANCE OF 50 FEET; THENCE SOUTH A DISTANCE OF 666 FEET; THENCE WEST A DISTANCE OF 50 FEET TO THE POINT OF BEGINNING.



TYPICAL BUILDING SETBACKS
FOR LOTS 41 - 48
FOR LOTS 6 - 15
FOR LOTS 20 - 29
FOR LOTS 34 - 40



TYPICAL BUILDING SETBACK
FOR LOT 1



TYPICAL BUILDING SETBACK
FOR LOTS 2 - 5
FOR LOTS 16 - 19
FOR LOTS 32 & 33

TYPICAL BUILDING SETBACKS

LOT AREA TABLE

LOT 1	2186 SQ. FT.	LOT 12	2480 SQ. FT.	LOT 23	2480 SQ. FT.	LOT 34	4613 SQ. FT.	LOT 45	2902 SQ. FT.
LOT 2	4368 SQ. FT.	LOT 13	2480 SQ. FT.	LOT 24	4811 SQ. FT.	LOT 35	2640 SQ. FT.	LOT 46	2902 SQ. FT.
LOT 3	2700 SQ. FT.	LOT 14	2480 SQ. FT.	LOT 25	4567 SQ. FT.	LOT 36	2640 SQ. FT.	LOT 47	2902 SQ. FT.
LOT 4	2700 SQ. FT.	LOT 15	2579 SQ. FT.	LOT 26	2480 SQ. FT.	LOT 37	2640 SQ. FT.	LOT 48	2902 SQ. FT.
LOT 5	3732 SQ. FT.	LOT 16	4050 SQ. FT.	LOT 27	2480 SQ. FT.	LOT 38	2640 SQ. FT.		
LOT 6	2537 SQ. FT.	LOT 17	3150 SQ. FT.	LOT 28	2480 SQ. FT.	LOT 39	2640 SQ. FT.		
LOT 7	2480 SQ. FT.	LOT 18	3150 SQ. FT.	LOT 29	2662 SQ. FT.	LOT 40	4351 SQ. FT.		
LOT 8	2480 SQ. FT.	LOT 19	4050 SQ. FT.	LOT 30	4050 SQ. FT.	LOT 41	2949 SQ. FT.		
LOT 9	2480 SQ. FT.	LOT 20	2620 SQ. FT.	LOT 31	3150 SQ. FT.	LOT 42	2902 SQ. FT.		
LOT 10	4697 SQ. FT.	LOT 21	2480 SQ. FT.	LOT 32	3330 SQ. FT.	LOT 43	2902 SQ. FT.		
LOT 11	4654 SQ. FT.	LOT 22	2480 SQ. FT.	LOT 33	3395 SQ. FT.	LOT 44	2902 SQ. FT.		

SURVEYOR/ENGINEER

RICHARD L. WEHR, PLS
PLSA ENGINEERING & SURVEYING
1120 WEST LINCOLN AVENUE
YAKIMA, WASHINGTON 98902

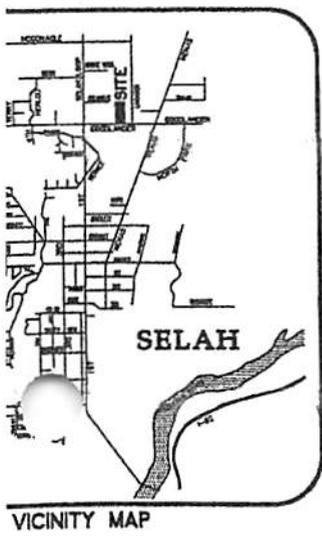
OWNER/DEVELOPER

CARL TORKELSON
TORKELSON CONSTRUCTION
P.O. BOX 292
SELAH, WASHINGTON 98942

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

PRELIMINARY PLANNED DEVELOPMENT
OF PARCEL NO'S. 181425 - 33029 & 33030
— PREPARED FOR —
TORKELSON CONSTRUCTION

DRAWN BY: RICK
DATE: 11/20/2013
JOB NO. 13257
SHEET NO.
1 of 1



P:\Sub\13257_Subdiv\Drawings\13257RFP2.dwg, 11/20/13 2:15 PM, rick



**CITY OF SELAH
SHORT PLAT
APPLICATION FORM**



FILE NO: 913.45.14-02 SEPA:
DATE FEE PAID: REC'D BY:

INSTRUCTIONS --- PLEASE READ PRIOR TO COMPLETING APPLICATION

- Please type or print your answers
- Answer all questions completely. If you have questions about this form or the application process, call the Selah Planning Department at (509) 688-7365
- Remember to bring all necessary attachments and the required filing fee when the application is submitted.
- The City will not accept an application for processing unless it is complete and the filing fees paid. Filing fees are non-refundable
- Filing fee of \$350 plus \$40 per lot.
- 6 copies of the proposed short plat (8 1/2 X 11) or (11 x 17)
- Title report (must be current and reflect the undersigned signatures)
- Complete and full legal description of the property

NAME / ADDRESS OF INDIVIDUAL COMPLETING THIS APPLICATION:	NAME: <u>RICK WEHR</u> <u>PLSA ENG. & SURVEYING</u> SIGNATURE: <u>Rick Wehr</u> STREET: <u>1120 W. LINCOLN AVE</u> CITY: <u>YAKIMA</u> STATE: <u>WA</u> ZIP: <u>98902</u> PHONE: <u>575-6990</u>
---	--

NAME / ADDRESS OF LEGAL OWNER OF PARCEL AND OWNER'S INTEREST IN THE PROPERTY ASSESSOR'S PARCEL NUMBER FOR THE LOT <u>181425 - 33029</u>	NAME: <u>DANNY BOWERS</u> SIGNATURE: STREET: <u>207 GOODLANDER RD.</u> CITY: <u>SELAH</u> STATE: <u>WA</u> ZIP: <u>98942</u> PHONE: CHECK ONE: <input checked="" type="checkbox"/> FEE SIMPLE OWNER <input type="checkbox"/> CONTRACT PURCHASER <input type="checkbox"/> OTHER _____
---	--

ZONING CLASSIFICATION / AVERAGE LOT SIZE / NO. OF LOTS / COMPREHENSIVE PLAN DESIGNATION	ZONING CLASSIFICATION: <u>R-2</u> AVERAGE LOT SIZE: <u>0.5 AC</u> NUMBER OF LOTS: <u>4</u> COMPREHENSIVE PLAN DESIGNATION:
---	--

DO ALL PROPOSED LOTS ABUT AND HAVE DIRECT ACCESS TO AN EXISTING CITY STREET? YES ___ NO X

ADDITIONS TO EXISTING OR NEW STREETS PROPOSED? YES ___ NO X

SOURCE AND LOCATION OF WATER SUPPLY? CITY OF SELAH WATER LOCATED IN GOODLANDER ROAD

METHOD OF SEWAGE DISPOSAL? CITY OF SELAH SEWAGE SYSTEM

ASSESSOR'S TAX PARCEL NUMBER 181425 - 33029

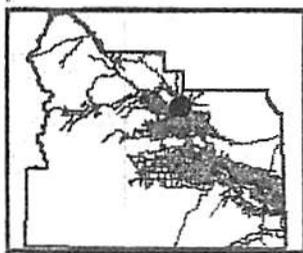
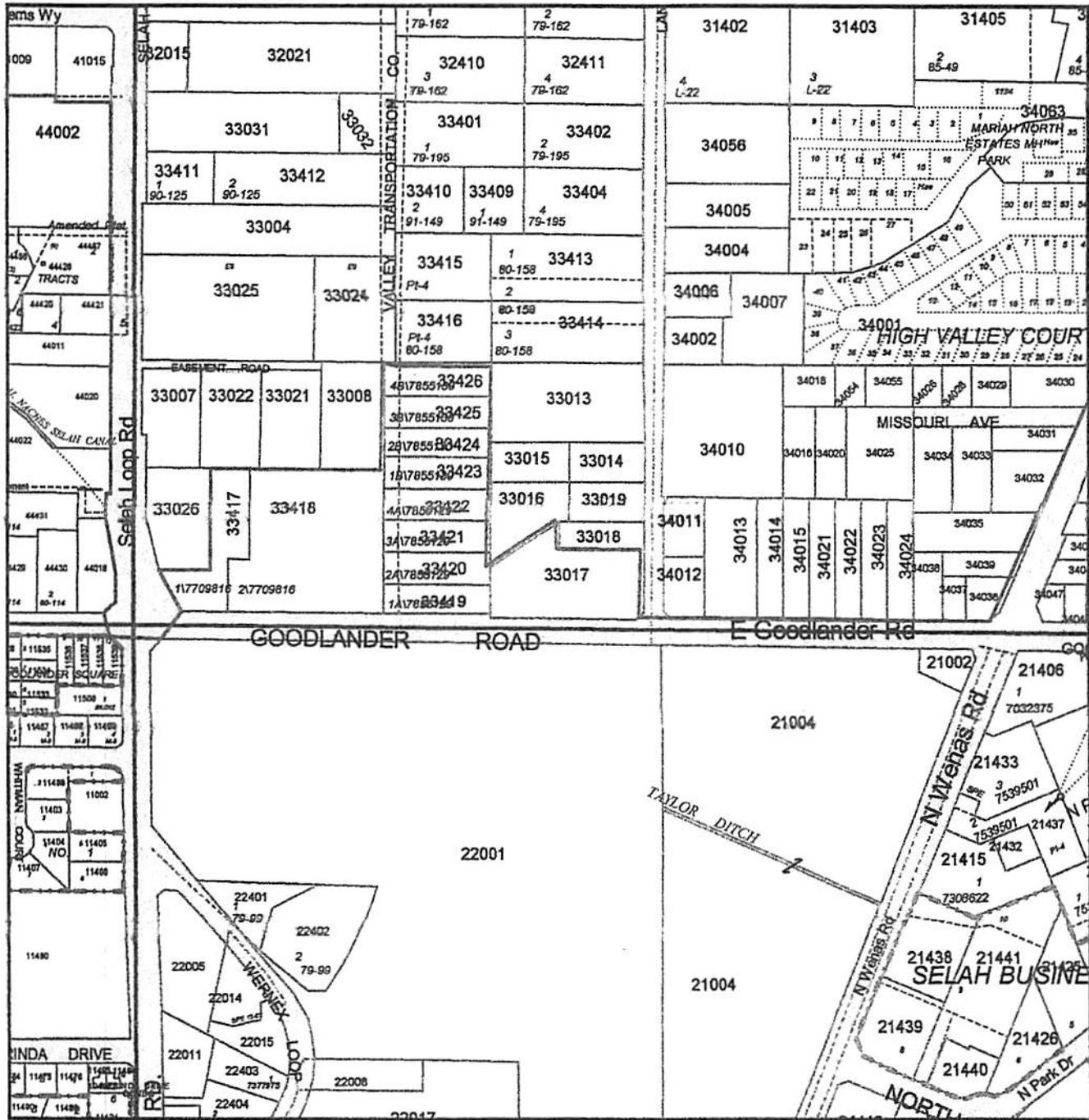
CERTIFICATION
 I certify that the information on this application is true and correct to the Best of my knowledge.

Date: 4/11/14 signature of Property Owner or Authorized Agent Danny Bowers

Yakima County GIS - Washington Land Information Portal

[Print Map]
[Close Map]

Yakimap.com



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

City Limits

 Sections

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



One Inch = 400 Feet

Feet 200 400 600

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: 1/21/2015 10:22:42 AM

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

AFTER RECORDING MAIL TO:

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

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

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

Space above this line for Recordors use only

STATUTORY WARRANTY DEED

**** RE RECORD TO CORRECT LEGAL****

File No: 4431-2354358 (MC)

Date: December 19, 2014

Grantor(s): Danny O. Bowers and Patricia G. Bowers and Danny O. Bowers and Patricia F. Bowers, Trustees of the Bowers Family Holding Trust

Grantee(s): Carl L. Torkelson and Candi R. Torkelson *2A,
Abbreviated Legal: LOTS 1B, 2B, 3B & 4B, SHORT PLAT, REC. 7855130 AND LOTS 1A, 3A & 4A, SHORT PLAT, REC. 7855129, YAKIMA COUNTY

Additional Legal on page:

Assessor's Tax Parcel No(s): 181425-33419, 181425-33421, 181425-33422, 181425-33423, 181425-33424, 181425-33425, 181425-33426, 181425-33420

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

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

PARCEL A:

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

PARCEL B:

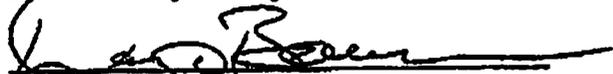
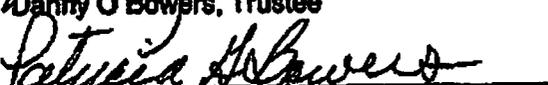
*2A,
LOTS 1A, 3A AND 4A OF SHORT PLAT, RECORDED NOVEMBER 07, 2014 UNDER RECORDING NO. 7855129, RECORDS OF YAKIMA COUNTY, WASHINGTON.

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


Danny O. Bowers

Patricia G. Bowers

Bowers Family Holding Trust

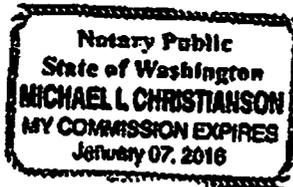

Danny O Bowers, Trustee

Patricia G Bowers, Trustee

STATE OF Washington)
)-ss
COUNTY OF Yakima)

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

Dated: December 27, 2014 

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



CITY OF SELAH

APPLICATION FOR ZONING CODE AMENDMENT
APPLICATION REQUIREMENTS

Date Submitted/Received by _____

- _____ Non-Refundable Application Fee _____
 - _____ Site Plan (~~Six~~ ^{Two} (2) copies) 12 1/2" x 17" _____
 - _____ Vicinity Site Map with North Arrow _____
 - _____ ~~List of Adjacent Property Owners (From County Assessor Office)~~ _____
- *All application requirements must be completed before the application is accepted by the City.

1. TYPE OF ZONING CODE AMENDMENT REQUIRED

Rezone: Other: _____

A. If requested rezone, what is the original zoning and requested zoning (i.e. R-1 to R-2)

R2 to PD

Comprehensive Plan Designation: Moderate Density Residential

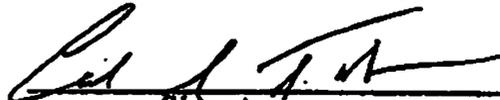
B. If amendment to zoning code, what is the proposed amendment (please attach amendment to application).

2. NAME OF APPLICANT:

Torkelson Construction, Inc.

ADDRESS OF APPLICANT:

P.O. Box 292
Selah, WA 98942


Signature

TELEPHONE: WORK 509-3305
Cell 945-0133

HOME 509-3301

3. NAME OF LEGAL PROPERTY OWNER:
(If different from applicant)
ADDRESS:

Carl L. Torkelson
Carli R. Torkelson

Candi R. Seckelton
Signature

TELEPHONE: WORK 697-3305
Call 945-0133

HOME 697-3301

4. Yakima County Assessor's Office Parcel No. for Property(s) 181425-33029 + 181425-33030.

Legal Description of property: on plat map

4. Summary of proposed rezone or zoning code amendment.

We would like to rezone from Moderate Density to a Planned Development.



CITY OF SELAH

PLANNING DEPARTMENT
113 WEST NACHES AVENUE
SELAH, WA 98942
PHONE: (509) 698-7365 FAX (509) 698-7372
ENVIRONMENTAL CHECKLIST



FILE NUMBER: _____
DATE FEE PAID _____
RECEIVED BY _____ / _____
FEE: \$275

INTRODUCTION

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal if it can be done) and to help the agency decide whether an EIS is required.

This environmental checklist asks you to describe some basic information about your proposal. Government agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply". Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist; may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impacts.

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply". IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project applicant," and "property of site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

BACKGROUND

1. Name of proposed project, if applicable: *Whispering view estates*
2. Name of applicant: *Torkelson Construction*
3. Address and phone number of applicant and contact person: *PO Box 292 Selah wa*
4. Date checklist submitted: *(509) 945-0133 (509) 697-3305*
1-08-14
5. Agency requiring checklist: *CITY OF SELAH*
6. Proposed timing or schedule (including phasing, if applicable): *ASAP*

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. **48 Lot Planned development**
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. **None**
9. Do you know whether applications are pending for governmental approvals or other proposals directly affecting the property covered by your proposal? If yes, explain. **listed above**
10. List any government approvals or permits that will be needed for your proposal, if known. **Buiding + Grading Permit**
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. **to Create a 48 Lot Planned Development out of a 4 acre R-2 property**
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. **207 Goodlander Rd**
13. Taxation parcel numbers(s): **181425-33029 181425-33030**

TO BE COMPLETED BY APPLICANT ONLY

EVALUATION FOR

AGENCY USE

Environmental Elements

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other **Rolling then flat above**
- b. What is the steepest slope on the site (approximate percent slope)? **90%**
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland. **Clay base topsoil**
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. **None**
- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill. **back fill foundation fill from dist on site**
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. **NO**
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? **500%**
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: **silt fences and waddles placed accordingly**

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known. **Dust, automobile quantities UNKNOWN**
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. **NONE**

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. Water

a. Surface:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into. **NONE**
- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. **NO**
- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. **NONE**
- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. **NO**
- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan. **NO**
- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge. **NONE**

b. Ground:

- 1) Will groundwater be withdrawn, or will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known. **NO**
- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage, industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. **NONE**

c. Water Runoff (including storm water):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (including quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. **Storm water will flow into Containment facilities**
- 2) Could waste materials enter ground or surface waters? If so, generally describe.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any: **Grading,**

engineered Containment facilities

4. Plants

a. Check or circle types of vegetation found on the site:

- deciduous trees: alder, maple, aspen, **other**
— evergreen tree: fir, cedar, pine, other:

- shrubs
- grass
- pasture
- crop or grain
- wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

- b. What kind of and amount of vegetation will be removed or altered? **10% mostly grass and shrubs**
- c. List threatened or endangered species known to be on or near the site. **None Known**
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
landscaped yards + green belt areas

5. Animals

- a. Circle any birds and animals, which have been observed on or near the site or are known to be on or near the site:
 Bird: hawk, heron, eagle, songbirds, other: Same Quail
 Mammals: deer, bear, elk, beaver, other:
 Fish: bass, salmon, trout, herring, shellfish, other:
- b. List any threatened or endangered species known to be on or near the site. **NONE KNOWN**
- c. Is the site part of a migration route? If so, explain. **NO**
- d. Proposed measures to preserve or enhance wildlife, if any: **NONE**

Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. **electric + Natural Gas**
- b. **Natural Gas heat**
 Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. **NO**
- c. What kind of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any. **higher insulating qualities, compliance with building code**

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of the proposal? If so, describe. **NONE**
- 1) Describe special emergency services that might be required. **NONE**
 - 2) Proposed measures to reduce or control environmental health hazards, if any: **NONE**
- b. Noise
- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, construction, operation, other)? **Some Traffic and Normal living Noise**

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. **Construction noise 7AM to 5PM Monday - Friday**
Normal household noise
- 3) Proposed measures to reduce or control noise impacts, if any: **NONE**

8. Land and Shoreline Use

- a. What is the current use of the site and adjacent properties? **R-2 + R-1**
- b. Has the site been used for agriculture? If so, describe. **NO**
- c. Describe any structures on the site. **1 existing house**
- d. Will any structures be demolished? If so, what? **yes**
- e. What is the current zoning classification of the site? **R-2 multi family**
- f. What is the current comprehensive plan designation of the site? **R-2**
- g. If applicable, what is the current shoreline master program designation of the site? **N/A**
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so specify. **NONE**
- i. Approximately how many people would reside or work in the completed project? **150 to 200**
- j. Approximately how many people would the completed project displace? **NONE**
- k. Proposed measures to avoid or reduce displacement impacts, if any: **NONE**
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
Compatible Larger building that match existing structures

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
52 middle income housing
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
NONE
- c. Proposed measures to reduce or control housing impacts, if any:
NONE

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
33 feet tall standard wood siding
- b. What views in the immediate vicinity would be altered or obstructed? **NONE**
- c. Proposed measures to reduce or control aesthetic impacts, if any:
Quality Controlled aesthetic homes

11. Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur? **NONE**
- b. Could light or glare from the finished project be a safety hazard or interfere with views? **NO**

- c. What existing off-site sources of light or glare may affect your proposal? **NONE**
- d. Proposed measures to reduce or control light and glare impacts, if any: **NONE**

12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity? **NONE**
- b. Would the proposed project displace any existing recreational uses? If so, describe. **NO**
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: **NONE**

13. Historic and Cultural Preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on the site? If so, generally describe. **NONE**
- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site. **NONE**
- c. Proposed measures to reduce or control impacts, if any: **NONE**

14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any. **Goodlander Rd**
- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop? **NO**
- c. How many parking spaces would the completed project have? How many would the project eliminate? **4 per unit**
UNKNOWN
- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private). **NO**
NONE eliminated
- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe. **NO**
- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur. **TBD Peak volumes expected at beginning and end of work day**
- g. Proposed measures to reduce or control transportation impacts, if any: **NONE**

15. Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe. **Yes fire, police, schools ect**
- e. Proposed measures to reduce or control direct impacts on public services, if any. **NONE**

16. Utilities

- a. Circle utilities currently available at the site: **electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**
Telephone + Cable

CITY OF SEALH

APPLICATION FOR ZONING CODE AMENDMENT
APPLICATION REQUIREMENTS

Date Submitted/Received by

- ___ Non-Refundable Application Fee
 - ___ Site Plan (^{two 2} ~~Six (6)~~ copies) 12 1/2" x 17"
 - ___ Vicinity Site Map with North Arrow
 - ___ List of Adjacent Property Owners (From County Assessor Office)
- *All application requirements must be completed before the application is accepted by the City.

1. TYPE OF ZONING CODE AMENDMENT REQUIRED

Rezone: Other:

A. If requested rezone, what is the original zoning and requested zoning (i.e. R-1 to R-2)

R2 to PD

Comprehensive Plan Designation: Moderate Density Residential

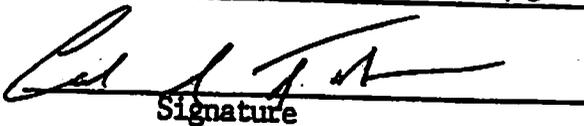
B. If amendment to zoning code, what is the proposed amendment (please attach amendment to application).

2. NAME OF APPLICANT:

Torkelson Construction, Inc.

ADDRESS OF APPLICANT:

P.O. Box 292
Sehal, WA 98942


Signature

TELEPHONE: WORK 609-3305
Cell 945-0133

HOME 609-3301

3. NAME OF LEGAL PROPERTY OWNER:
(If different from applicant)
ADDRESS:

Carl L. Torkelson
Candi R. Torkelson

Candi R. Seikelson
Signature

TELEPHONE: WORK 697-3305 HOME 697-3301
Cell 945-0133

4. Yakima County Assessor's Office Parcel No. for Property(s) 181425-33029 + 181425-33030.

Legal Description of property: on plat map

4. Summary of proposed rezoning or zoning code amendment.

We would like to rezone from Moderate Density to Planned Development.

JS

CITY OF SELAH

APPLICATION FOR ZONING CODE AMENDMENT
APPLICATION REQUIREMENTS

Date Submitted/Received by _____

- _____ Non-Refundable Application Fee _____
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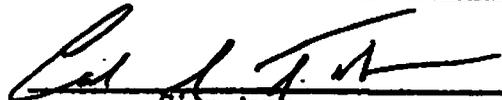
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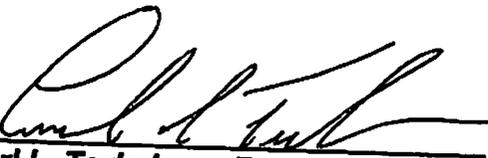
ADDENDUM:

This Agreement is made on the date set forth below and modifies the previous agreement or is an additional agreement to the original Purchase and Sale Agreement or Owner-Contract, of the parties dated November 3, 2013 which agreement is described as 207 E. Goodlander, Selah, WA 98942 (Parcel #181425-33029 & 33030), and was made by and between Dan Bowers and Carl L. Torkelson, President, Torkelson Construction, Inc. The undersigned persons each warrant that they are authorized to modify the previous agreement as herein outlined and to execute this modification agreement. If the modification relates to real property, the legal description is attached hereto as an exhibit and made a part hereof. If the signatures hereto are required to be notarized, a properly executed notary acknowledgment is also attached hereto and made part hereof.

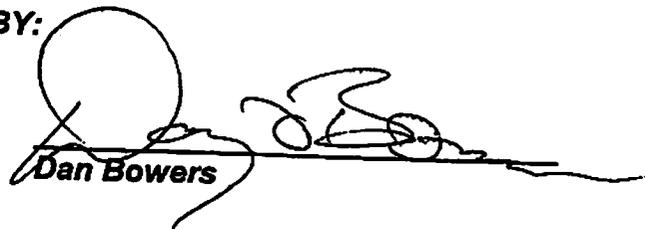
This agreement of the parties is modified/changed or added to, including any changes in price, as follows:

1. I, Dan Bower, authorize Carl Torkelson as President, of Torkelson Construction, Inc. to act on my behalf as the owner of 207 E Goodlander, Selah, WA 98942 (Parcel #181425-33029 & 33030). This is solely for obtaining any and all permits and any and all other documents that may be needed for construction and development of said property.
2. All funding and costs will be the responsibility of Torkelson Construction, Inc., with no risk to Dan Bowers.
3. Cash out of property at the price of \$420,000.00, will be executed upon completion of final development phase or sooner if agreed upon by both parties.

Dated: Nov 3rd 2013


Carl L. Torkelson, President
Torkelson Construction, Inc.

AGREED BY:


Dan Bowers

Notary
State of
LAUREL
MY COMM
AP

Development provisions are subject to the Vested Rights Doctrine under state law and they will vest at such time where the application is filed with the City, deemed to be complete, and where all required fees have been paid; 2) Vested permit applications shall be reviewed under the development regulations in effect on the date when the complete application is filed, including the provisions of the Planned Development (PD) Zoning District, Chapter 10.24, in effect at the time the complete application is filed notwithstanding the repeal of Chapter 10.24; and, 3) this provision for vesting, however, shall not be construed to restrict the City from imposing conditions on permits pursuant to the State Environmental Policy Act (SEPA), RCW 43.21, WAC 197-11, and the City's adopted SEPA provisions.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, clause or phrase of this Ordinance.

ORDAINED this 26th day of May, 2015.

John Gawlik, Mayor

ATTEST:

Dale E. Novobielski, Clerk Treasurer

APPROVED AS TO FORM:

Robert F. Noe, City Attorney

ORDINANCE NO. _____

Exhibit HE14

challenge, objection, contention, and even litigation;

WHEREAS, there is often no clear direction within the provisions of Chapter 10.24 to guide resolution of issues related to development proposals processed under its provisions;

WHEREAS, as a result, the City Council wishes to now repeal the existing Chapter 10.24 and wishes to re-draft the provisions to provide clearer direction to both to developers proposing projects under the City's Planned Development chapter and to interested residents and others so as to alleviate the possibility for contention and challenge relating to the project proposed under a new chapter;

WHEREAS, the City Council recognizes that its zoning code cannot be left without a chapter addressing Planned Development for long and, therefore, the City Council wishes to direct that a work program be established by the Mayor and City Staff to expeditiously address a new Chapter to the Selah Municipal Code addressing Planned Development and that the City Staff work through the Planning Commission to undertake the necessary analysis and public processes to recommend a new Chapter to the City Council for its consideration within 90 days of this effective date of this ordinance;

WHEREAS, the City acknowledges that development proposals may legally vest prior to the effective date of this ordinance, that this ordinance shall have no effect on such vested development applications, and that those applications will be processed according to the ordinances in effect at the time of vesting. This is in accordance with the Vested Rights Doctrine in the State of Washington which "refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission." *Noble Manor v. Pierce County*, 133 Wn.2d 269, 275 (1997);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, DOES ORDAIN as follows:

Section 1. Selah Municipal Code Chapter 10.24, "Planned Development (PD) Zoning District" repealed.

Chapter 10.24 of the Selah Municipal Code is hereby repealed in its entirety and shall no longer have any force or effect after the effective date of this Ordinance.

Section 2. Work Program. The Mayor is authorized to allocate the necessary resources and staff time to establish a work program addressing issues related to the Planned Development within the City of Selah and to develop through the Planning Commission and its public hearing and input processes appropriate proposals for a new Chapter to the Selah Municipal Code addressing Planned Development and other associated development regulations, as may be necessary.

Section 3. Vesting. 1) Applications for permits under the City's Planned

ORDINANCE NO. _____

AN ORDINANCE REPEALING CHAPTER 10.24, TO THE SELAH MUNICIPAL CODE, "PLANNED DEVELOPMENT (PD) ZONING DISTRICT"; DIRECTING A WORK PROGRAM; ADDRESSING VESTING; ESTABLISHING AN EFFECTIVE DATE; AND, PROVIDING FOR SEVERABILITY

WHEREAS, the City of Selah previously adopted Ordinance No. 1634 (2004) and subsequently amended that Ordinance by Ordinance No. 1779 (2009), which is codified as Chapter 10.24, Planned Development (PD) Zoning District, to the Selah Municipal Code;

WHEREAS, Chapter 10.24 was adopted for the purposes set forth within its own provisions. Section 10.24.010 provides as follows:

10.24.010 - Purpose.

A planned development zone approved in accordance with this chapter shall be a separate zoning district. Regardless of underlying zoning requirements, a planned development zone may permit all proposed uses and developments that can shown to be in conformance with the policies of the comprehensive plan. A planned development zone may be permitted at any location subject to the provisions of this chapter. Approval of a planned development zone shall modify and supersede all regulations of the underlying zoning district. An applicant may also file a subdivision or binding site plan application which, if filed, may be processed concurrently with the planned development zone application.

The purpose of this chapter, providing for the establishment of a planned development zone, 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. In addition, planned development zones may:

- (1) Encourage flexibility in design and development that are architecturally and environmentally innovative, that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable utilization of the land than is possible through strict application of standard zoning and subdivision controls; provided, that subdivision controls are applicable to planned development zoning only when a planned development zone application is combined with a proposal to divide land into lots.

WHEREAS, over the years development proposals have been processed under the provisions of Chapter 10.24 and those development proposals have often been met with

Petition to deny Whispering Views Estates

Petition summary and background	The Selah City Council granted Dan Bowers a variance and a short plat to property located at 207 E Goodlander Road. The short plat created eight approximately one half acre lots. The variance that was granted is for a 25' easement for utilities and a 20' private road to serve these lots. Under the short plat, a duplex would be allowed on each of the eight lots. We believe this action restricts the property from further division of parcels.
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to deny the proposed rezone from R-2 to Planned Development (PD) proposed by Carl Torkelson on the property at 207 E Goodlander Road, that was granted a private road to serve a single duplex on each of eight parcels. The proposed development is for 48 units that do not approximate the surrounding neighborhoods in design or density.

Printed Name	Signature	Address	Comment	Date
James Sears	<i>James Sears</i>	309 E. Goodlander RD.	roads already busy	4-13-15
Heather Hill	<i>Heather Hill</i>	309 S. W. Way DR.	overload OUR SCHOOLS	4/13/15
Michael L Amos	<i>Michael L Amos</i>	40 Horsehoe Lane	TOO MANY	4-13-15
Corei Chapman	<i>Corei Chapman</i>	3402 Selah Loop	TOO MANY	4/13/15
Ann Sterling	<i>Ann Sterling</i>	1201 Spencers Rd	NOT SAFE FOR OUR KIDS	4/13/15
Mike Rex	<i>Mike Rex</i>	133 E. HOME AV	EYE SORE	4-13-15
SOAN RICHARDSON	<i>Soan Richardson</i>	1105 W CHERRY	TO MANY	4-13-15
VERNON RICHARDSON	<i>Vernon Richardson</i>	1105 W CHERRY	TO MANY	4-13-15
Viola Smith	<i>Viola Smith</i>	1206 W. Cherry Ave.	To many in small place	4-13-15
JASON JONES	<i>Jason Jones</i>	616 W. PEARL	TO MUCH TRAFFIC	4-13-15

THE EXHIBIT 15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Brendan Alford	<i>Brendan Alford</i>	111 E Fremont Ave Selah wa 98942	I Feel Putting more Apartments up just makes us town look cheap and brings the price	4/6/15
L Renee Lantry	<i>L Renee Lantry</i>	803 W Home Selah wa 98942	over crowding of area + schools	4/10/15
Connie Moran	<i>Connie Moran</i>	305 B N 10th St Selah WA 98942	He has NO concern about anyone except himself	4/14/15
Michael Moran	<i>Michael Moran</i>	305 B N 10th St Selah wa 98942		4-10-15
Travis Mawle	<i>Travis Mawle</i>	20 Hobbyhorse Lane		4-10-15
Teisha Wener	<i>Teisha Wener</i>	209 N 5th St. Selah wa 98942	Too close!	4-10-15
Jennifer Hixon	<i>Jennifer Hixon</i>	201 E Home Ave Apt B4 Selah WA 98942	Not enough room Not safe	4-10-15
Karen Standfill	<i>Karen Standfill</i>	590 Lampe Rd Selah	Types! too many	4-10-15
Esmeralda Reyes	<i>Esmeralda Reyes</i>	3270 Selah Loop Rd.		4/10/15
Matthew White	<i>Matthew White</i>	703 Collins Rd		4/10/15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Seth Villafan	<i>Seth Villafan</i>	502 N. 11th. St.		4-07-15
Cayla Jean	<i>Cayla Jean</i>	915 goodlander circle		4-07-15
Austin Broom	<i>Austin Broom</i>	201 wise Acres rd		11-07-15
Avon Reynolds	<i>Avon Reynolds</i>	10044 Spayars Rd		4-07-15
Benjamin Williams	<i>Benjamin Williams</i>	171 Collins RD		4-07-15
Stephen Mowery	<i>Stephen Mowery</i>	143 side RD		4-07-15
Betty Cloud	<i>Betty Cloud</i>	401 N12 th St		4-8-15
Ashley Norton	<i>Ashley Norton</i>	110 State Route 521 #161	my kid attends public school.	4-8-15
Katie O'Neen	<i>Kathleen O'Neen</i>	112 S. 2nd St, Selah	work in Selah	4-8-15
Crystal Suber	<i>Crystal Suber</i>	1206 Spayars, Selah		4-8-15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Richard Pingrey	<i>Richard H. Pingrey</i>	P.O. Box 130 Selah, WA ⁹⁸⁹⁴²	oppose the development	4-11-15
Ken Campbell	<i>Ken Campbell</i>	1060 Brotherhood Rd Selah		4/11/15
Jo Littlejohn	<i>Jo Littlejohn</i>	251 Rankin Rd Selah	Opposed	4/11/15
Doug Fishback	<i>Doug Fishback</i>	1206 W. Yakima Ave Selah	Opposed to development	4-11-15
Mary Fishback	<i>Mary J. Fishback</i>	1206 W Yakima Ave Selah	Opposed	4-11-15
John Ericson	<i>John Ericson</i>	600 Baker Rd Selah		4-11-15
Honnie Davis	<i>Honnie Davis</i>	113 Park Selah	opposed	4-11-15
Debbie Wilkx	<i>Debbie Wilkx</i>	2240 Spryville Rd	opposed	4-11-15
H. Louise Schenk	<i>H. Louise Schenk</i>	512 N. 2nd St	opposed	4-11-15

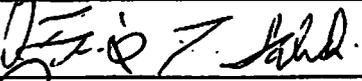
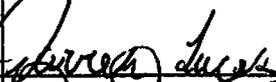
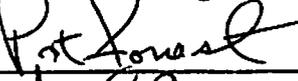
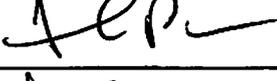
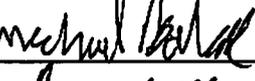
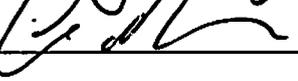
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Britta Lewis	<i>Britta Lewis</i>	409 5th 3rd St		4-11-15
Mike Nesmith	<i>Mike Nesmith</i>	341 Kader Lane		4-11-15
Jerry Kimes	<i>Jerry Kimes</i>	208 N. 4th St.		4-11-15
Cheyenne Sodergren	<i>Cheyenne Sodergren</i>	1006 W. Yakima Ave		4/11/15
Dorothy Boubis	<i>Dorothy Boubis</i>	394 Sole Rd	reason for showing?	04/11/15
Alex Durvin	<i>Alex Durvin</i>	PO Box 304 ^{Selah WA 98942}		4/11/15
Rosalva Pacheco	<i>Rosalva Pacheco</i>	123 Peterson Ln		4/11/15
Cherrie Mitchell	<i>Cherrie Mitchell</i>	1790 Selah Loop Rd #36		4/11/15
Kathleen A Ellis	<i>Kathleen A Ellis</i>	40 Pheasant Area		4/11/15
Adriana	<i>Adriana</i>	1002 W Fremont Ave		4/11/15

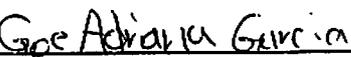
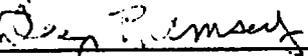
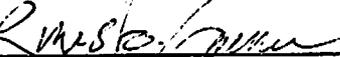
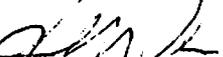
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Printed Name	Signature	Address	Comment	Date
Joe Garcia		608 SPEYERS Rd.	Too close to School	04-11-15
Joie E. Sahch		1266 ^{1/2} Speyers Rd		04-11-15
Darren Lucas		804 W Home Ave	Too close to school	04-11-15
PAT FORREST		2220 N Wenas Rd	Absolutely does not fit in block	4-11-15
JOHN CURRIN		111 SAGEWOOD DR	DO NOT ALLOW	4-11-15
Jody Sumner		2753 Speyers Rd		4/11/15
Michael Babcock		2820 N Wenas Rd	Safety	4/11/15
Nyna Babcock		PO Box 396 2320 N Wenas Rd	safety, too close to school	4/11/15
Garry L. Laughlin		1507 W Orchard Ave		4/11/15
A.J. Crews		209 White Bluffs PL	Traffic Safety	4/11/15

Petition to deny Whispering Views Estates

Petition summary and background	The Selah City Council granted Dan Bowers a variance and a short plat to property located at 207 E Goodlander Road. The short plat created eight approximately one half acre lots. The variance that was granted is for a 25' easement for utilities and a 20' private road to serve these lots. Under the short plat, a duplex would be allowed on each of the eight lots. We believe this action restricts the property from further division of parcels.
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Printed Name	Signature	Address	Comment	Date
Danna Noel		500 Terrace Dr	Bullcrap	4-11-15
Guadalupe Garcia		551 Point DR		4-11-15
Dee R. Jones		501 Solob Hgts Rd		4-11-15
Dennis Magnus		1396 Jessica Dr		4-11-15
ROMEO BABAT		707 1/2 W. Dear Ave.		4-11-15
Ernesto		1315 Crider St Rd		4-11-15
Alec Thomas		130 E HOME AVE		4-11-15
Don Miller		741 N. 45th St		4-11-15
Rod Wilson		1424 N Lewis		4-11-15
Jaye Vollmer		171 Weems Way		4-11-15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Sam Anderson	<i>Sam Anderson</i>	390 GORNE RD SELAH WA 98941		02/11/15
David VonSassen	<i>David VonSassen</i>	509 S. 3rd St Selah WA		4/11/15
Ab Krueger	<i>Ab Krueger</i>	660 Sole Rd Selah		4/11/15
Rich Sowder	<i>Rich Sowder</i>	507 Jamie Dr Selah		4-11-15
Catherine & Good	<i>Catherine & Good</i>	401 Hoffmann Rd Selah, WA 98942		4-11-15
John Lamb	<i>John Lamb</i>			4-11-15
Eric Switzer	<i>Eric Switzer</i>	221 S GRANITE RD		4-11-15
Kareem James	<i>Kareem James</i>	603 Anchor Place Selah		4-11-15
Ray Wiggins	<i>Ray Wiggins</i>	141 Savelle Ln Selah WA		4-11-15
Claudia Naranjo	<i>Claudia Naranjo</i>	1662 Odins RD Selah wa 98942		4-11-15

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Printed Name	Signature	Address	Comment	Date
José Méz	<i>[Signature]</i>	UG		4-11-15
Dan Wallbom	<i>[Signature]</i>	Brook Lane		4-11-15
Julia Farias	<i>[Signature]</i>	N. Wenas Rd Selah		4/11/15
CAROL JOSELOWITZ BROWN	<i>[Signature]</i>	311 W. N. Wenas Ave Selah		4-11-15
Kim Arbogast	<i>[Signature]</i>	303 N. Wenas Rd apt A-1 98942	not safe for ^{High} schooler	4/11/15
Karem Cota	<i>[Signature]</i>	S 3rd st selah 98942	not safe for school	4/11/15
Gordon Page	<i>[Signature]</i>	342 Dusty Pudding		4/11/15
BILLIE OWENS	<i>[Signature]</i>	151 5th Ave		4-11-15
Don Peters	<i>[Signature]</i>	311 Hillcrest Dr.	Please, Please, Slowdown	4/11/15
Maria I. Gonzalez	<i>[Signature]</i>	608 Speyess Rd.	not safe for High	4-11-15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Dan Masarellis	<i>Dan Masarellis</i>	2620 Selah LP Rd		4-11
Kim Taylor	<i>Kim Taylor</i>	3-1 Wiland Heights		4-11
Steve Arustberg	<i>Steve Arustberg</i>	710 St. Rt. 82j		4-11
Ray Corbin	<i>Ray Corbin</i>	1390 Fremuth Rd Selah		4/11/15
JAMES E HAINA	<i>James E Haina</i>	181 LANCASTER Rd, Subal		4/11/15
Brandon Jensen	<i>Brandon Jensen</i>	323 Hillcrest dr		4/11/15
Sharma Taylor	<i>Sharma Taylor</i>	50 Weems Way		4/11/15
Jean Matson	<i>Jean Matson</i>	280 Lakes Lane		4/11/15
Diana Gomez	<i>Diana Gomez</i>	104 Palmer DR		4/11/15
Travis Hale	<i>Travis Hale</i>	108 Valview dr		4/11/15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Samantha Larsen		509 S 3 rd St	NO!	4/11/15
ERIN STROH		1404 W. Cherry	NO	4/11/15
Peggy Gregg		101 Sinclair Ln E	NO	4-11-15
John A Oats		51 Ween Way	NO	4-11-15
Jamie Cooper		250 Brown Lane So.	NO	4-11-15
Stephanie Beasley		340 Lynwood Ln. Selah	He's Crazy !!!	4-11-15
Lisa Walker		2040 N Wenas Rd		4-11-15
John Klubertox		765 W Fremont	NO Way No A Good	4-11-15
Stephanie Eucke		30 Lorry Good Lane	Not the right place	4-11-15
Austin Buckley		3104 W. Viola Ave		4-11-15
Dominic Foris		130 ES NVA HOS ALG	OVER GROWING	4/11/15
Shelly Benjamin		701 Viewcrest Ct.		4/11/15
Derrick Ouz		21 Pleasant view	too much taller	4-11-15
GILBERT ESTRADA		108 W. SELAH AVE # 7	LOOKS TOO CONDENSED	4/11/15
Rebecca Merrifield		141 Grange Rd	NO	4/11/15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Sandra Field	<i>Sandra Field</i>	106 W Goodlander		04/10/15
Julie Field	<i>Julie Field</i>	106 W. Goodlander Rd		4/10/15
Scott Pryse	<i>Scott Pryse</i>	903 Livershire		4/10/15
Betty Pryse	<i>Betty Pryse</i>	110 W Goodlander Rd		4-10-15
Michael Cote	<i>Michael Cote</i>	105 W Goodlander		4-10-15
Ilana Tyrrell	<i>Ilana Tyrrell</i>	71 Buchanan Rd		4-10-15
Enka Christman	<i>Enka Christman</i>	2100 N. Wenas		4/10/15
Sean Currie	<i>Sean Currie</i>	101 W Goodlander Rd		4/10/15
Amy Currie	<i>Amy Currie</i>	101 W. Goodlander Rd		4/10/15
GARY Choate	<i>Gary Choate</i>	101 W GoodLANDER RD		4/10/15

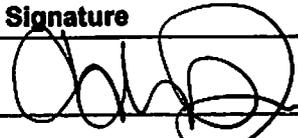
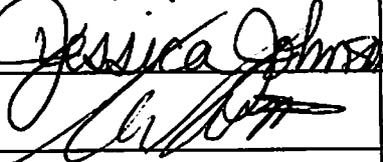
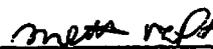
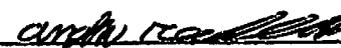
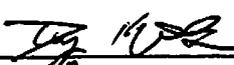
Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Kathy Pratt	<i>Kathy Pratt</i>	1N. 12 th St. Selah		4/8/15
Vicki Clark	<i>Vicki Clark</i>	P.O. Box 936 Selah		4/8/15
JANSAETT BEACH	<i>Jansett Beach</i>	335 Hepma		4/8/15
Emily Peter	<i>Emily Peter</i>	40 Gopher Rd		4/8/15
Jarah Hayes	<i>Jarah Hayes</i>	1924 E. Selah Rd		4/8/15
Janelle	<i>Janelle Brownell</i>	730 N. W. Selah Rd		4/8/15
Randy Parnell	<i>Randy Parnell</i>	2771 Stark Loop		4/8/15
Diane Kay Bean	<i>Diane Kay Bean</i>	60 Berriman Ln		4/8/15
Anthony J. Munir	<i>Anthony J. Munir</i>	Post Box 10985		4/8/15
Robert Richards	<i>Robert Richards</i>	2673 Selah Loop R		4/8/15

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Printed Name	Signature	Address	Comment	Date
Adrea Dobbos		201 E Home Ave		4/11/14
Casey Hutchins		321 Lakeside Rd.		4/11/14
Monck Martinez		921 Hibbling Rd		4/11/15
PI JESSICA JOHNSON		201 E Home Ave		4/11/15
MARTIN MATYKIN		250 RESERVE LANE		4-11-15
Mandi Carr		WENAY ST		4-11-15
Merritt McDowell		804. N. 2ND ST		4-11-15
Andrew Raddam		201 E. home ave		4-11-15
Daryn Keith		20 Gala Drive Selah, WA		4-11-15
Byrdeella Corbett		1762 Highway 82, YACINA WA		4-11-15

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Printed Name	Signature	Address	Comment	Date
Marliese Ahvora	<i>Marliese Ahvora</i>	1771 Selah Loop Rd.		3/8-15
Chris Osburn	<i>Chris Osburn</i>	7701 Douglas Dr.		3-8-15
JOAN SEVERANCE	<i>Joan Severance</i>	Po Box 1342 Edin		3-8-15
Bobby Shanks	<i>Bobby Shanks</i>	606 W. Orchard Ave.		3-8-15
Kathy Sutter	<i>Kathy Sutter</i>	9 So. 8th St Selah		03-8-15
Tom Campbell	<i>Tom Campbell</i>	108 N 12th St Selah		3-8-15
Chris Berg	<i>Chris Berg</i>	1101 E Payer Rd		4-8-15
Steve Smith	<i>Steve Smith</i>	2940 Alachua Way Rd		4-8-15
Ellie Sensney	<i>Ellie Sensney</i>	84 Mc Gonagle Rd.		4-8-15
Suzanna Wood	<i>Suzanna Wood</i>	1031 Cabin W Lane		4-8-15

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Patty Neume	<i>Patty Neume</i>	191 Swallow Ln		4/8/15
Adam Miles	<i>Adam Miles</i>	9451 N. Wenas Rd		4/8/15
Ignacio Romero	<i>Ignacio Romero</i>	4811 Modesto way		4/8/15
Tami Poole	<i>Tami Poole</i>	830 Fletcher lane		4/8/15
Colleen Brezo	<i>Colleen Brezo</i>	205 Clemens View Rd		4/8/15
MARTIN DAVIS	<i>Martin Davis</i>	730 Hall Road		4/8/15
Jack Griffin	<i>Jack Griffin</i>	1003 Goodlander Dr		4/8/15
Kyle Harris	<i>Kyle Harris</i>	81 Lake Loop		4/8/15
Amanda Tonde	<i>Amanda Tonde</i>	2091 McManagler Rd		4/8/15
Ric Arvige	<i>Ric Arvige</i>	3806 N. Wenas rd. Selah		4-8-15

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Printed Name	Signature	Address	Comment	Date
SHEEK KELLY	<i>Meryl Kelly</i>	61 Sagenwood Dr. Selah	Really? The view	4/11/15
Priscilla Hogeman	<i>Priscilla Hogeman</i>	192 Shlager Rd		4/11/15
Laura Folenpaha	<i>Laura Folenpaha</i>	905 Goodlander		4/11/15
Amy Burdage	<i>Amy Burdage</i>	16801 N Wenas Rd		4/11/15
Brendan R. Taylor	<i>Brendan R. Taylor</i>	303 Valleyview Ave Selah	go check out the traffic on the west side	04/11/15
Dore Milk	<i>Dore Milk</i>	4145-10th Selah		4/11/15
Shay Chanon	<i>Shay Chanon</i>	802 Jaime		4/11/15
Ashley Weller	<i>Ashley Weller</i>	110 Lyle WOP		4/11/15
Jon J	<i>Jon J</i>	300 Wise Ave		4/11/15
LETTA KYLE	<i>Letta Kyle</i>	8110 N Wenas SP18		4-11-15

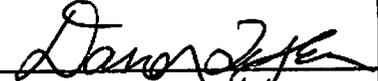
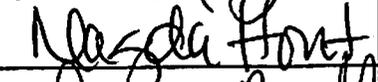
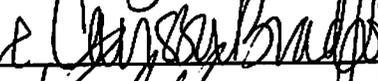
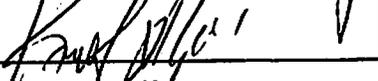
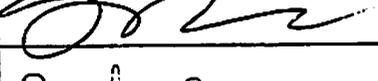
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DAN SOUCY	<i>Dan Soucy</i>	905 GOODLANDER DR		4/11/15
Rick Lindseth	<i>Rick Lindseth</i>			4/11/15
^{Charlotte Jean} Chry Jean	<i>Chry Jean</i>	900 COLLINS RD		4-11-15
<i>Chry Jean</i>	<i>Chry Jean</i>	900 COLLINS RD.		4/11/15
Randy Olsen	<i>Randy Olsen</i>	1422 N WERVA RD		4/11/15
Sharon L. Six	<i>Sharon L Six</i>	231 Lampson Rd		4/11/15
Vicki ALBAUO	<i>Vicki Albauo</i>	710 SURY RD		4-11/15
Beverly S Buxton	<i>Beverly Buxton</i>	253 Main Rd, Selah WA		4-11-15
Jean Stanley	<i>Jean Stanley</i>	410 S. 5 th St Selah, WA 98942		4-11-15
Pia Morris	<i>Pia Morris</i>	291 Archie Rd, Selah WA 98942		4-11-15

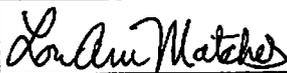
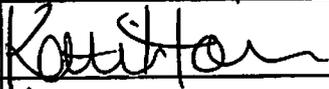
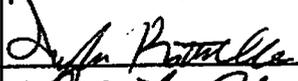
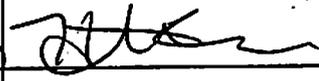
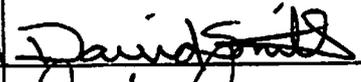
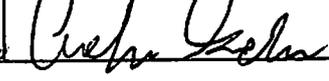
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Damon Lynex		160 Kodiak Rd	She saved me	4/10
Margda Hunt		400 Apple way	Deny	4/10
Carissa Bradford		41 E Goodlander Rd	NO!	4/10
Krystyna Mudes		1810 Selah Leap Rd.	Deny	4/10
Joan Morales		1810 Selah leap rd	Deny	4/10
Devin Teske		182 Leicester Rd.	Deny	4/10
Lloyd Culbert		241 Buchanan	NO	4/10
Sarah Spire		915 Jamie Dr	Bad idea	4/10
Shauna Butler		922 Crestview Ct	Deny	4/10
Carole Davis		113 W Park ave	No	4/10

Petition to deny Whispering Views Estates

Petition summary and background	The Selah City Council granted Dan Bowers a variance and a short plat to property located at 207 E Goodlander Road. The short plat created eight approximately one half acre lots. The variance that was granted is for a 25' easement for utilities and a 20' private road to serve these lots. Under the short plat, a duplex would be allowed on each of the eight lots. We believe this action restricts the property from further division of parcels.
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Printed Name	Signature	Address	Comment	Date
Low Ann Matches		2431 S. Weaver RD Selah WA 99242		4/10
Brian Jensen		509 N. 7th St. #A		4/10
Troy Howard		Po Box 921 Selah		4/10
Nathan Walters	Nathan Walters	604 West Lane NW		4/10
Katie Horton		309 N 10th St.		4/10
Dylan Kotevich		121 Rainier Lane		4/10
MARTIN STRUB		138 LATHAM 49901		4/10
Heather Kichon		316 S. 1st Street #5		4/10
David Smith		121 Oakwood Lane		4/10
Archie Gardner		60 Kyle Ave		4/10

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Orvil Blackledge		777 Collins Rd Selah	Trashing - (bad) Trashing Selah	4-13-15
Carmen Blackledge		779 Collins Rd Selah	Increased crime (say no) More plus roads + Schools	4-13-15
Dale Blackledge		805 Speyers Rd, Selah	More Traffic / Increase Crime	4-17-15
Jennifer Chase		191 Lancaster Selah WA	increases The Traffic on goodlander (decreases The Value of ^{my} inhabit _{ice})	4-17-15
Jean Harris		38 Orchard St Naches, WA	I must traffic	4-19-15
Jeff Harris		1040 Old Naches Hwy Naches	too much traffic	4-19-15
Jannell Schuffelbain		381 Tibbling Rd Selah WA	Traffic, outgrow school-crime decrease property value	4-20-15
Cheryl Harris Cheryl Harris		191 Lancaster Rd	noise, increased crime, High density increased traffic, does not match residential decrease property values, way	4-20-15
JAY HARRIS		126 Laverne Rd	increase traffic - no parking Dogs following over owner's road	4/20/15
Reese Crenshaw		161 Lancaster	to much traffic	4-20-15

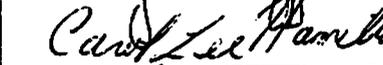
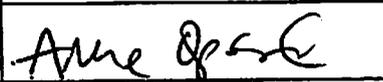
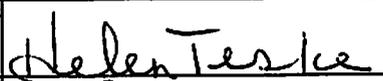
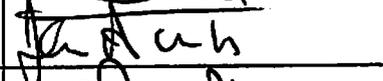
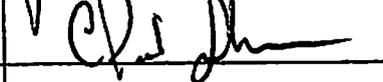
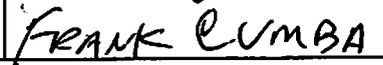
Petition to deny Whispering Views Estates

Petition summary and background	The Selah City Council granted Dan Bowers a variance and a short plat to property located at 207 E Goodlander Road. The short plat created eight approximately one half acre lots. The variance that was granted is for a 25' easement for utilities and a 20' private road to serve these lots. Under the short plat, a duplex would be allowed on each of the eight lots. We believe this action restricts the property from further division of parcels.
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Printed Name	Signature	Address	Comment	Date
Jennifer Clark	Jennifer Clark	311 W NACHS AVE Apt 18		4/13/15
Kevin Lake	Kevin Lake	701 S 4th St		4/13/15
Ginger Newkirk	Ginger Newkirk	100 Sinclair Ln		4.13.15
Josie	Josie	808 W Pearl		4.13.15
Lester Callahan	Lester Callahan	702 View Crest Ct		4/13/15
Krystle Poplaski	Krystle Poplaski	321 E Goodlander 98942	Not enough traffic safety	4/13/15
Mary Spaulding	Mary Spaulding	1070 Parish Rd 98942	Not enough room, enough traffic	4/13/15
Dorothy Kilpatrick	Dorothy Kilpatrick	313 E Goodlander Rd	too much traffic now	4/13/15
Kacie Sears	Kacie Sears	309 E Goodlander Rd	traffic	4/13/15
Nicholas Poplaski	Nicholas Poplaski	321 E Goodlander Rd	traffic and safety	4/13/15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Kathy Schaffer		P.O. BOX 1301 Selah		4/11/15
Carol Lee Hamilton		807 Ridgeview, Selah		04/11/15
WILLIAM SHUEL"		806 RIVERVIEW AVENUE, SELA.		4/11/15
ARNE OPSTAB		209 E. NACHES AV6		4/11/15
Helen Teske		182 Lancaster Rd	No! No! No! Not compatible w area.	4/11/15
John Hennessey		181 Lockout Pt. Drive		4/11/15
Brendan O'Connell		803 W. 6 th Ave		4/11/15
JOHN TESKE		182 LANCASTER RD	PLEASE DENY! THIS DOESN'T FIT THE NEIGHBORHOOD	4/11/15
Paul Graham		9911 N. WINDY R		4-11-15
Frank Cumba		2442 SELAH LOOP Rd.		4-11-15

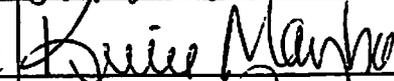
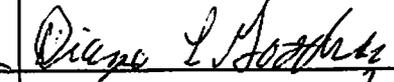
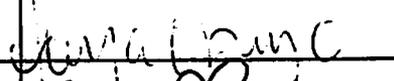
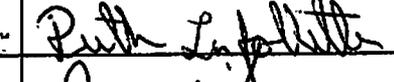
Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Rudolph DeLam	Rudolph DeLam	31 Anderson Selah wa		4/11/2015
Mindy Schuse	Mindy Schuse	507 Jamie Dr Selah		4/11/15
Sandra Maciel	Sandra Maciel	209 Palmer Rd.		4/11/15
Sunny Sonker	Sunny Sonker	309 Hillview		"
Austyn Tolbert	Austyn Tolbert	201 c. home care apt DS		4/11/15
Marnie Cabusaw	Marnie Cabusaw	1309 Heritage Hills Pl		4/11/15
Marlys Bound	Marlys Bound	10 Enterprise Drive		4/11/15
Carol Wyseman	Carol Wyseman	1913 Reservoir Lp Selah		4/11/15
Laura Schaeffer	Laura Schaeffer			
Laura Schaeffer	Laura Schaeffer	806 W. 5th Ave.		4/11/15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Pamela Mann		1130 N - Wenas Rd. #2		4-11-15
Kerrie Maybee		16d Poplar Ln		4-11-15
Erica Poole		830 Fletcher Ln		4-11-15
Diana Goodrich		625 Olive Ln	ugly	4-11-15
JANEY MILLER		330 + BR King		4-11-15
Mark Rel		405 Hillcrest Dr		4-11-15
Tanya Christy		602 W 11 St		4-11-15
Michael Conner		1101 Crestview Dr		11 APR 15
Ruth LaFollette		121 Kader Ln		4-11-15
Jim Fife		371 McPherson Ln		4-11-15

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Printed Name	Signature	Address	Comment	Date
Deb Buxton		PO Box 144, Selah	Listen to Citizens	4-11-15
BRAD BROWN		321 Hemlock Ln	11	4-11-15
Carole Solistrend		710 Hwy 821 #10		
Gloria Gonzales		209 N 3RD ST. Selah	"	4-11-15
DeAnn Collins		1043 P.O. Box Selah	Extremely ugly	4-11-15
Donald Sodergren		1006 W. YAKIMA AVE ^{SELAH}	NO!	4-11-15
Doreen Gill		2040 SELAH Loop Rd		4-11-15
Staci Spurbek		610 Fremont Rd	wierd place	4-11-15
Julie Archer		201 Merinda St.	too many ↑	4/11/15
Brooks Archer		↓	Too Many	4-11-15
Bill Buxton		Po Box 144 SELAH		4-11-15
Staci Sainsbury		710SR 821 #134	NO	4-11-15
Donnie Foster		710SR 821 #134	NO	4-11-15
Bruna Lockhart		601 W Orchard	NO	4-11-15
Lana Larsen		8 S. 3rd st		

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Printed Name	Signature	Address	Comment	Date
Mark K Coles	<i>Mark K Coles</i>	713 N 5th Ave, Yakima		4/11/15
Cory Bore	<i>Cory Bore</i>	90 Lancaster		4/11/15
Stanley D Taylor	<i>Stanley D Taylor</i>	50 Weems		4/11/15
Eliza Estie	<i>Eliza Estie</i>	225 Lampard Rd		4/11/15
Bill Billings	<i>Bill Billings</i>	916 Crestview Ct		4/11/15
Sue Adams	<i>Sue Adams</i>	1840 Crusher Crest		4/11/15
Darci Hedden	<i>Darci Hedden</i>	101 N. Johnson Rd.		4-11-15
Kourtney Estie	<i>Kourtney Estie</i>	51 Weems Way		4/11/15
Marku Jilly	<i>Marku Jilly</i>	2240 Speyers Rd.		4/11/15

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Printed Name	Signature	Address	Comment	Date
Dale Renner	<i>[Signature]</i>	180 Lancaster Rd.	Density does not coincide with surrounding single family homes	4/7/15
Corrie Van Ostrum	<i>[Signature]</i>	65 Rome Rd.	Density does not conform to existing neighborhood use	4/8/15
Vickie Jones	<i>[Signature]</i>	850 th Buffalo Rd.	Ridiculous Development	4/8/15
Shayne Brader	<i>[Signature]</i>	140 Hinton Ln.		4/8/15
Stella Whitehead	<i>[Signature]</i>	180 Lancaster Rd	Eyegore, doesn't fit	8 th of 4-15
Madeline Renner	<i>[Signature]</i>	180 Lancaster Road	doesn't belong in Selah!	4/8/15

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Printed Name	Signature	Address	Comment	Date
Leann Brons	<i>Leann Brons</i>	131 E. Fremont Ave		4/15/15
Maria L.	<i>Maria Lozano</i>	129 E Fremont Ave		4/15/15
Leah Armstrong	<i>Leah Armstrong</i>	117 E Fremont		4/15/15
SUSA W HALE	<i>Susan Hale</i>	109 E Fremont		4/15/15
Nisa Owens	<i>Nisa Owens</i>	128 E Fremont Ave		4-15-15
Victor Morales	<i>Victor Morales</i>	128 E Fremont Ave		4-15-15
Cesar Rodrigue	<i>Cesar Rodrigue</i>	128 E Fremont Ave		4-15-15
Mary Delong	<i>Mary Delong</i>	101 E Bartlett Ave		4/15/15
Daniel Hoy	<i>Daniel Hoy</i>	101 E Bartlett Ave		4/15/15
John Ries	<i>John Ries</i>	102 E Bartlett Ave		4/15/15

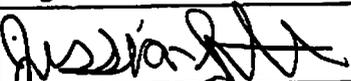
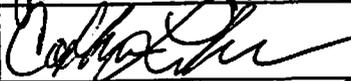
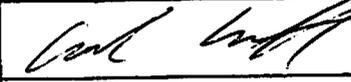
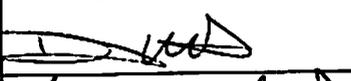
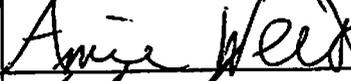
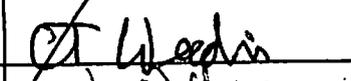
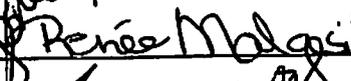
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Printed Name	Signature	Address	Comment	Date
Alana Taylor Oaks	<i>Alana Taylor Oaks</i>	51 Weems Way, Selah		4/11/15
Shawn Mcbride	<i>Shawn Mcbride</i>	109 W. Goodlander Rd		4/11/15
Jessica Fairis	<i>Jessica Fairis</i>	301 E Home		4/11/15
Ron Sweezer	<i>Ron Sweezer</i>	271 Herlouy DR.		4-11-15
Kathryn Homier	<i>Kathryn Homier</i>	10220 N. Wenas Rd		4/11/15
BEVERLY Homier	<i>Beverly J. Homier</i>	10220 N. Wenas Rd.		4/11/15
Kari deBoer	<i>Kari deB</i>	1200 W. PEAR		4/11/15
Jacob Oaks	<i>Jacob Oaks</i>	51 Weems Way		4/11/15
Cyenne Oaks	<i>Cyenne Oaks</i>	6 Hovdepark Dr.		4/11/15
Andrew Fleming	<i>Andrew Fleming</i>	201 W. Orchard Ave		4/11/15

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Printed Name	Signature	Address	Comment	Date
Jessica Schmitt		920 Firing center Rd Yakima WA	I'm 14 years old and I don't want to own property . I want to live out on the lands have a couple acres and do manual labor	4/11/15 4/11/15
Catherine Labrum		763 Fremuth Rd Selah WA.		4/11/15
Carl Coffin		211 S 37th Ave Yakima WA		4/11/15
David Weiss		503 Senter Pl.		4/11/15
Amie Weiss		503 Senter Pl.		4/11/15
BRADEN LAINE		6812 N. WENAS RD		4/11/15
Tyler Weedon		285 W Selah Ave		4/11/15
Debra Ann Peterson		1110 W Fremuth Ave		4/11/15
Renee M. Magasin		3751 Selah Loop Rd	Looks awful!	4/11/15
JIG MILLER		191 Peterson home		4/11/15

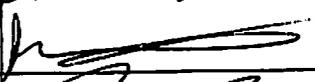
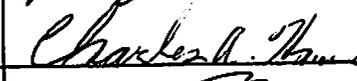
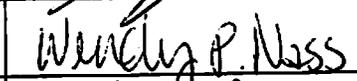
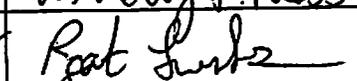
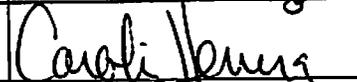
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Amber Amey	<i>[Signature]</i>	700 N 4th St Selah		4/11/15
Jessica White	<i>[Signature]</i>	812 Jamie dr. Selah		4/11/15
Tyla Yenser	<i>[Signature]</i>	912 Jamie Dr.		4/11/15
Ruth Hill	<i>[Signature]</i>	515 " "		4/11/15
Guadalupe Richardson	<i>[Signature]</i>	200 Kinnikane, Selah		4/11/15
Swan Clippinger	<i>[Signature]</i>	120 Knapp's Landing		4/11/15
Gary Krauer	<i>[Signature]</i>	151 Wingquest Selah		4/11/15
Joanne Weier	<i>[Signature]</i>	2542 E Selah Rd Yak.		4/11/15
Vaughn Vickers	<i>[Signature]</i>	2123 Selah loop Selah		4/11/15
LORRIE M BARTON	<i>[Signature]</i>	511 So, 3rd St Selah		4/11/15

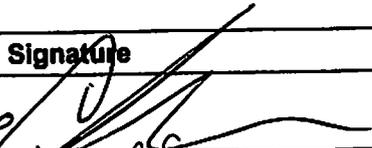
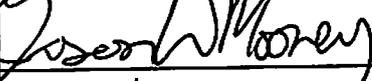
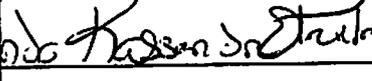
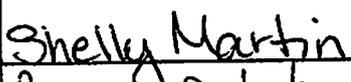
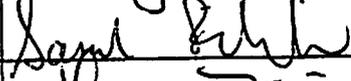
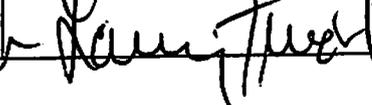
Petition to deny Whispering Views Estates

Petition summary and background	The Selah City Council granted Dan Bowers a variance and a short plat to property located at 207 E Goodlander Road. The short plat created eight approximately one half acre lots. The variance that was granted is for a 25' easement for utilities and a 20' private road to serve these lots. Under the short plat, a duplex would be allowed on each of the eight lots. We believe this action restricts the property from further division of parcels.
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to deny the proposed rezone from R-2 to Planned Development (PD) proposed by Carl Torkelson on the property at 207 E Goodlander Road, that was granted a private road to serve a single duplex on each of eight parcels. The proposed development is for 48 units that do not approximate the surrounding neighborhoods in design or density.

Printed Name	Signature	Address	Comment	Date
Paul Bronson		505 W BARTLETT AVE		4-12-15
Dan Torkelson		502 W BARTLETT AVE		4/12/15
Joe Lango		502 W Bartlett Ave		4/12/15
Charles A. Hunter		502 W. Fremont		4-12-15
BOB NASS		1111 W. Orchard		4/12/15
Wendy Nass		1111 W. Orchard		4/12/15
Pat Linker		606 W. Orchard AVE		4-12-15
Brook Nelson		608 W Orchard Ave		4-12-15
Carli Pazerchas		602 W Orchard Ave		4.12.15
Carolina Herrera		1010 W. 14 th St. Selah		4/12/15

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Printed Name	Signature	Address	Comment	Date
Cheryl Hulse		510 W. Orchard	deny	4/12/15
Tibbitha Fuddle		506 W. Orchard Ave	deny	4/12/15
STACY L GOESCH		501 W. Orchard Ave	deny	4/12/15
Wade Kennedy		101 W 5 th ST	deny.	4/12/15
DENNIS BARN		702 1/2 W Fremont	Deny	4/12/15
Rosann Mooney		507 W Fremont Ave	Deny	4/12/15
Kassandra Elizabeth		507 W Fremont Ave	Deny	4/12/15
Shelley Martin		108 W. Bartlett Ave	Deny	4/13/15
Samuel Rubin		110 W. Bartlett Ave	Deny	4/13/15
Larry Friedrich		110 W Bartlett Ave	Deny	4/13/15

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Printed Name	Signature	Address	Comment	Date
Lucia Detroit	<i>Lucia Detroit</i>	214 W Goodlander Rd		4/11/2015
Jacob Norman	<i>Jacob Norman</i>	101 Highland St		4/13/15
Kaydee Hogan	<i>Kaydee Hogan</i>	31 Buttercup Lane		4/13/15
Stacey Jones	<i>Stacey L. Jones</i>	610 W. Bean Ave		4-13-15
Luke Betker	<i>Luke Betker</i>	187 E Orchard Ave		4-13-15
Karen Wickstrom	<i>Karen Wickstrom</i>	303 N Wena Rd E-3		4/13/15
Gauge Boatright	<i>Gauge Boatright</i>	116 East Fremont		4/13/15
CHASE MATTHEW	<i>Chase Matthew</i>	122 E. FREMONT AVE		4.13.15
Erica Matthew	<i>Erica Matthew</i>	122 E Fremont Ave		4/13-15
Joe Maxwell	<i>Joe Maxwell</i>	115 E Orchard Ave		4-13-15

Petition to deny Whispering Views Estates

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Printed Name	Signature	Address	Comment	Date
Scott Honey	<i>Scott Honey</i>	508 N 14th St		4/7/15
Amanda Hey	<i>Amanda S. Hey</i>	3 N. 10th St, Selah		4/7/15
Stacy Halliker	<i>Stacy Halliker</i>	281 Clemens View Rd		4/7/15
Tara-Lyn Mears	<i>Tara-Lyn Mears</i>	804 Speyers Rd		4/7/15
Jason Hershey	<i>Jason Hershey</i>	804 Speyers rd		4/7/15
Nichelle Desbald	<i>Nichelle Desbald</i>	406 W Riverside		4/7/15
Matt Nadeau	<i>Matt Nadeau</i>	850 Cabin Ln		4/7/15
Megan Peterson	<i>Megan Peterson</i>	850 Cabin Lane		4-7-15
Bryce Holbrook	<i>Bryce Holbrook</i>	231 S. Kishmore rd		4-7-15
Elizabeth Bartota	<i>Elizabeth Bartota</i>			4-8-15
Janisa Gornicke	<i>Janisa Gornicke</i>	207 E Goodlander Rd		4-13-15