

City of Selah  
Council Minutes  
May 13, 2008

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: Summer Derrey, Keith Larson, Denise Nichols, Paul Overby, Herb Schmidt; John Tierney

Members Excused:

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

C. Pledge of Allegiance

Councilman Schmidt led the Pledge of Allegiance. Bob Massey, Youth Pastor at Selah Covenant Church led the group in prayer.

D. Agenda Changes

Mayor Jones noted Agenda Changes. Resolution M-5 and Ordinance N-2 were added.

E. Public Appearances

1. Community Pride Award

Mayor Jones presented the Community Pride award to Adon Ruiz, Javier Plaza, Leonardo Zuniga and Eric Monson who donated their time and materials to enhance the entrance to McGonagle Park. He stated the City of Selah appreciates their contributions in this beautification project.

F. Getting To Know Our Businesses

G. Communications

1. Oral

John Cooper, Director of the Yakima Visitors and Convention Bureau, addressed the Council. He noted having filled a vacancy recently for the City of Selah on the tourism Promotion Area Board. He introduced Rose Ann Meta, General Manager of the Clarion Hotel, who will represent Selah until such time as the North Park Lodge is up and running. She said she is happy to represent Selah on the Board.

2. Written

- a. Letter from William H. Powell Regarding Selah Citizens Academy
- b. YBSA Monthly Report April 2008
- c. Memo from Allen Schmid Reporting on Tagging Clean-up April 2008

Mayor Jones noted Allen Schmid cleaned up 48 incidents of graffiti this month. He expressed his thanks to Mr. Schmid.

- d. Letter from Billy & Sharon Liner Regarding Roads Cherry Blossom Ridge Development

H. Proclamations/Announcements

I. Consent Agenda

Mayor Jones read the Consent Agenda.

**Councilman Schmidt moved approval of the Consent Agenda. Councilman Tierney seconded. By voice vote, Consent Agenda was adopted unanimously.**

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

- \* 1. Approval of Minutes: Council Meeting April 22, 2008
- \* 2. Approval of Claims & Payroll: Payroll 8 Checks Nos. 63325 – 63431 for a total of \$166,669.80 and Claims Checks Nos. 51706 – 51833 for a total of \$227,778.64.

J. Public Hearings

K. New Business

- 1. Procedures for Appointment of a Council Member

City Supervisor Frank Sweet addressed Item K-1, stating the ad will come out in tomorrow's *Selah Independent*. He said questions will not go to the applicants.

Councilwoman Denise Nichols said she will give question suggestions to Julie. She asked if the interviews will be done in a public meeting.

Mr. Sweet responded that the interviews will be done at a public meeting.

Councilwoman Nichols asked if the applications should be notarized. It was the consensus of the group that that was a good idea.

Mr. Sweet responded that interviews will be done June 10 at the regularly scheduled Council Meeting.  
Selah City Council Minutes 5/13/08

Councilman Schmidt asked for a time limit on interviews and suggested limiting time to 6 minutes.

City Supervisor Sweet suggested 15 minutes. He said discussion of applicants' qualifications will be in Executive Session.

There was additional discussion regarding the time limit.

Mayor Jones said they will give each candidate up to 15 minutes.

**Councilman Overby moved approval of the timeline of May 27 as the cutoff date for applications to be received and June 10 as the interview date at the regularly scheduled Council Meeting and a time limit for each interview not to exceed 15 minutes. Councilwoman Derrey seconded. Roll was called: Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Nichols – yes; Council Member Derrey – yes. Support was unanimous**

L. Old Business

M. Resolutions

1. Resolution Adopting the Selah Planning Commission Recommendation of Denial of Selah Urban Growth Area Comprehensive Plan Amendment 2006-1 (South Selah Neighborhood)

Community Planner Dennis Davison presented the Planning Commission Recommendation of Denial of Selah Urban Growth Area Comprehensive Plan Amendment 2006-1 (South Selah Neighborhood) drawing Council Members' attention to the packet. He stated the Planning Commission held a Public Hearing on this proposal as a result of the remand from the City Council. He noted materials include a Finding of Facts recommending the denial of Comprehensive Plan Amendment 2006-1 submitted by the South Selah Neighborhood. He noted the cover sheet is the Finding of Facts developed and approved by the Planning Commission and the Findings set forth in their recommendation of denial of the Plan amendment and rezone to low density residential and single family residential zoning was found inconsistent with the goals and policies of the Plan. The proposed amendment and rezone are inconsistent with the land use designation and zoning classification of the Plan. There has not been a showing of change in circumstances that would justify a change in the land use designation from high density to low density. And the fourth recommendation notes that the 2005 Comprehensive Plan identifies that approximately 1,305 acres remain to be developed for residential use, 748 to be developed as single family residential. They find that the proponent has failed to establish a public need to reclassify and rezone the 7 ½ acres to low density residential and single family residential zoning. He noted the packet includes a Staff Report that indicates the zoning of the property, the uses of the property surrounding the development, the notice provided what the proponent is doing currently on the property and the staff recommendation is for denial. He noted the packet also includes, starting on page 5, a copy of the citizens' petition which was resubmitted requesting that the Planning Commission consider this; the names are there for you to look at it, the site map showing the property in question, the parcel, a color map of the surrounding Comprehensive Plan; there is a site map on page 6 showing the current zoning of the property and the proposed zoning of the property proposed by the South Selah Neighborhood Association. He noted there are several letters that are included in there, and expressed his hope that Council Members have had an opportunity to read them. He noted there is also a packet of materials that deal with the transportation element of the Comprehensive Plan, as well as minutes of the Planning Commission meetings that were conducted up to the time when they formulated and adopted

their recommendation and transmitted it to the Council. He noted everyone is aware of the long history of this issue and that the files are exceedingly thick. He stated the Planning Commission through their diligence and the Public Hearing have (sic) concluded that the proposed map amendment to the Comprehensive Plan should be recommended for denial, and they've done so at the conclusion of their Public Hearing.

Mayor Jones asked if there were questions of Mr. Davison.

City Supervisor Sweet suggested that City Attorney Bob Noe could give a brief scenario of what will happen today to keep some semblance of order - new information, no new information, decisions made on what's in the Council packet, etc.

City Attorney Bob Noe said the City Council has before it the Planning Commission recommendation, and the Council should review that, then to make sure it complies with 10.40.050 to ensure that they applied that criteria correctly, and then determine whether the City Council should approve or reject that recommendation or whether they should conduct their own Public Hearing if they decide to take additional information.

Councilwoman Nichols asked how the Council should deal with the request that some Council Members recuse themselves.

Mr. Noe noted there was a request submitted indicating that there might be some conflict(s) of interest. He stated he sent a memo to Council Members yesterday regarding the appearance of fairness doctrine and how it applies to quasi-judicial proceedings. He said the question here is whether or not this is a quasi-judicial proceeding. He said generally speaking Comprehensive Plan determinations and amendments to Comprehensive Plans are purely legislative, so they're not quasi-judicial; however, if you're talking about a limited number of property rights being affected so there is a small number of property owners being affected, courts have said that comes into an adjudication type of scenario affecting individual rights and privileges, and that could be considered quasi-judicial. He said in that event, and if we assume that this is a quasi-judicial proceeding, then each Council Member must determine for his or herself whether he or she can be fair and appear fair. He said each Council Member has the obligation from Mr. Torkelson's letter with respect to the conflicts.

Councilman Paul Overby asked if he, Summer (Councilwoman Derrey) and John (Councilman Tierney) were to recuse themselves, what would happen if there isn't a quorum.

City Attorney Bob Noe said there is a rule that allows recused members to be called back to render a decision out of necessity to get the business completed. He said he didn't know if they would like him to render an opinion on whether individual Council Members are conflicted. He said he looked at issues with Council Member Derrey who made statements during her campaign which seemed to express general concerns of communication between the City and residents as well as general concerns about conflicting zoning provisions. He said he did not see Councilwoman Derrey as having a conflict that would preclude her from sitting on it. He noted Mr. Overby's conflict is more direct because he was part of the petitioners who requested the rezone. He said Councilman Overby appears to have a conflict. He stated he did not know the nature of the alleged conversations Council Member Tierney had with others at Planning Commission meetings. He noted he spoke with the Councilman prior to his attending the Planning Commission meetings and cautioned him about talking with anyone about the merits of the application. Mr. Noe stated his assumption that Councilman Tierney heeded his caution. He said it comes down to each Council Member must determine if he or she is conflict and disclose it, and if the applicant still feels they are conflicted, he needs to make that a part of the record.

Mayor Jones called on Councilman John Tierney who stated he takes exception to being accused of being biased. Councilman Tierney said he did not have any ex parte conversations with members of the South Selah Neighborhood Association nor when he had a conversation with Mr. (Joe) Kelly in Naches did he have any ex parte conversation. He said in order to give this body the appearance of fairness to Torkelson Construction, he would have no problem stepping out.

Councilman Paul Overby asked if they do step out for the decision, can they participate in discussion.

City Attorney Bob Noe said if they recuse themselves, they take no part in it. He said they could stay in the room, but could take no part in the decision-making process.

Councilman Herb Schmidt asked if that would only apply today or whenever this issue comes up.

Mr. Noe responded it would be for all time on this issue.

Councilman Overby stated the Council is addressing the issue of appearance of fairness, and he did sign the petition, misrepresented his address because he just moved in, which made it prior to his being a Council Member. He stressed this is not something he did as a Council Member. He expressed his discomfort about this, saying while he understands the appearance of fairness rule, this seems to be gerrymandering, and he finds it somewhat insulting to him and to the democratic process since it presumes how he and the others would vote. He stated if he were to put himself first in this situation, he feels duty-bound and obligated to render some verdict. The public put a lot of time into this, the Association has put a lot of time into it and they deserve to know where Council Members lie on this particular issue. He said he would feel upset at not being able to provide that. He said in terms of a favorable decision, he would be willing to do that also, but he wouldn't be pleased about it.

Mr. Carmody asked to be heard.

Mayor Jones called on Councilwoman Derrey.

Councilwoman Derrey stated she will not recuse herself. She said the letter says she grew up living at 608 Southern Avenue. She questioned (Mr. Torkelson's) definition of "growing up," noting she lived in the area from age 0 to 3 or 4, so she doesn't feel that is a conflict of interest. She noted she wanted to hear opinions and concerns while campaigning, so she doesn't feel that has anything to do with the appearance of fairness in her position as a Council Member. She added that the letter also referred to her attending a Planning Commission meeting where she did not sign the sign-in sheet. She noted she attended that meeting because of another issue that was on the Agenda, Speyers Road, and she was not asked to sign the sign-in sheet.

Councilman John Tierney clarified that he attended the Planning Committee meeting because he is on the Council Planning Committee. He said whether he sits on the right side of the aisle or the left side of the aisle is immaterial. He said he knows several people in the South Selah Neighborhood Association, because when he ran for office he did a lot of doorbelling in that neighborhood and talked to all of these people when he ran for office. He said he doesn't want Mr. Torkelson to feel uncomfortable with the fact that he is sitting here to make a decision on this request. He said some of these members (of SSNA) are members of his church, but they did not have any ex parte communication during those conversations. He said if it makes Mr. Torkelson more comfortable on the processing of this, he will step aside even though he feels he has an obligation to serve his constituents.

Mayor Jones called on Jamie Carmody, warning him to be brief. The Mayor noted this is not a Public Meeting (Hearing) and he is allowing Mr. Carmody to speak because we have to make a decision here.

Jamie Carmody, attorney for the South Selah Neighborhood Association, thanked Mayor Jones, and stated he has been representing the SSNA from the beginning of this. He stated he was not aware of the request and the position being taken that the appearance of fairness doctrine applies and that three Council Members have been asked to recuse themselves. He said in his legal opinion this is not a quasi-judicial process. He stated that the amendment process, as Mr. Noe has told them, is a legislative process just as the adoption of the Comp Plan was a legislative process. He told Council Members that each of them is entitled to vote on this issue and bring to that vote whatever knowledge they bring. He stated that the specific comments made in reference to Mr. Tierney's attending the Planning Commission - there's absolutely nothing wrong with attending the Planning Commission, in fact, the record that has been developed for their consideration was before the Planning Commission, so we would hope that they would have listened to those tapes or have attended as Mr. Tierney had done. He said he felt very strongly that the application or an argument that the appearance of fairness doctrine is applicable, he would simply disagree with those who think that would be proper procedure for that to be applied. He said he doesn't think Council Members should be conflicted or intimidated into withdrawing from participation, rather he thinks that is what they are elected to do, and this is exactly the type of process that each Council Member should participate in, so he would put that position in the record.

Mayor Jones thanked Mr. Carmody.

Ken Harper, representing Mr. Torkelson, apologized for the interruption knowing everybody wants to get this started, but the appearance of fairness doctrine is clear that if the applicant doesn't raise appearance of fairness concerns, that goes away, and he and his client have concerns. He said he would like to respond to what Mr. Carmody said and address the Council Members who are in sort of a "hot seat" right now. In regard to Mr. Carmody's comments, he stated the City should take the legal advice of their City Attorney. He stated it is very clear in appearance of fairness doctrine law that it does apply to site specific rezones, and what is before the Council today, reading directly from the actual proposal itself is "amendment of the Future Land Use Map Planning Action and a change to the zoning map from Multiple Family Residential (R-3) to One Family Residential (R-1)." He noted this proposal identifies three specific parcel numbers, two of which are owned by his client. That is a site specific rezone. He said he doesn't want to go against what he just said, that the Council should get legal advice from their own attorney, but he thinks Mr. Noe would back him in saying this is a site-specific rezone activity for which the appearance of fairness doctrine really was created. He said Mr. Torkelson has significant rights, significant values that are at interest in the way this Council decides this and he is entitled under this kind of circumstance to have the benefit of the appearance of fairness doctrine. In regard to the three Council Members and references to ex parte communications and possible conflicts on the record, he has no ability to read minds; however, he has heard nothing from Miss Derrey to suggest that she has any actual bias or any appearance of fairness problems and he feels the same way about Mr. Tierney. He said both Council Members explained the nature of their contacts and it doesn't appear unfair under the circumstances for those Council Members to listen to this case. He said he hated to single out any Council Member, but does think it's a different analysis for Mr. Overby, and said it's with all due respect. He noted the signature on the actual petition is meaningful, and he also heard Mr. Overby describe that he is a resident of that area. He asked that Mr. Overby, under the appearance of fairness doctrine, recuse himself from these proceedings. He assured Mr. Overby that this is not meant personally, but if he does not make that request now, he will not be able to.

Mayor Jones thanked Mr. Harper.

Councilman John Tierney announced he will recuse himself. He also admitted to attending one of these initial SSNA meetings, before they had sign-ins.

Councilman Paul Overby asked if he is obligated to keep silent on this issue after the vote is taken, if he recuses himself. City Attorney Noe said he thinks Councilman Overby is free to speak his mind; he just can't participate in the decision-making process if he chooses to recuse himself. The Councilman said the heart of the matter is whether this is a quasi-judicial matter. He said you could make a case that two of the three parcels under consideration are owned by one individual, and, that being the case, he can see that the decision would be quasi-judicial. He said he has to argue with himself because he feels a need to honor his commitment to his constituents who have every right to expect the Council Member whom they have elected to give an accounting, be held accountable for decision-making, what they do, how they operate, how they legislate. He noted the appearance of fairness rule is not just for the proponents, fairness also applies to the constituency. He stated that if gerrymandering the Council brings a favorable result, that is not fair to the citizens who elected him. He noted, that being the case, he would recuse himself, saying he wants to avoid any kind of possible conflict in court.

Mayor Jones thanked him and indicated that Council Members Tierney and Overby could step into his office. He said Councilwoman Derrey has explained herself that she has not lived there since she was very young.

Councilman Overby and Councilman Tierney left the meeting.

Councilwoman Derrey noted she would not be bullied into it (recusing herself) either.

Mr. Torkelson said he was not trying to bully her.

City Attorney Bob Noe asked for clarification, saying he thought he heard Mr. Harper say he had no objection to Councilman Tierney's participation.

Mr. Harper said Mr. Noe is correct, but the decision lay with Councilman Tierney.

Mayor Jones said he thinks this is for the best since these Council Members live in the neighborhood. He used the example of his having recused himself from a land purchase on North Wenas because he owned property there and it might have benefited him financially.

Councilwoman Denise Nichols stated over the past two months or so Council Members have received a number of letters from concerned citizens in the (South Selah) neighborhood. She said it just dawned on her what Bob (Noe) said about new information. She said they have all read (the letters), and not all of them were attached to this packet. She asked Mr. Noe what the position is on that information.

The City Attorney said the letters that came to the City directed to this issue, we've tried to include as part of the record. He said he isn't sure which items are missing. We have the April 17, 2008 letter from Mr. Hoffert which he brought to one of our Council Meetings which is included.

The City Supervisor asked if the letter dated May 1 is in the packet.

Administrative Assistant Gray stated that is a copy of what Mr. Hoffert had directed to Council Members.

The City Supervisor asked if that is the information dated May 1.

The City Attorney said there is a letter from Katy Fontaine dated May 1 and asked if that is part of the record.

The City Supervisor said he believed that was not included in the Council packet.

There was some confusion, and Mayor Jones identified the information handed out by Mr. Hoffert today.

City Attorney Noe asked Mr. Hoffert if he intended the information offered today to become part of the record.

Mr. Hoffert responded in the affirmative.

City Supervisor Sweet asked if that is considered new information that the Planning Commission did not have, and, if so, should that be allowed.

City Attorney Noe said it is (new information) and it is up to the Council whether they want to reopen that record or not. He said he didn't know if the other attorneys' opinion on that, but his is that if there is new information that the Planning Commission didn't consider, it would require the record be reopened by Council.

The City Supervisor asked if at that point in time it is then open for any other information.

Mr. Noe said the Council could deal with whatever they wanted in that; they could limit it or open it completely.

Councilwoman Nichols asked why they would consider this (Mr. Hoffert's handout) and not other information.

Frank Sweet said they either would or they wouldn't; they'd either keep it what's in the packet or open it up to everything else.

Mayor Jones said it is his understanding is that when it goes to Superior Court the evidence that's been presented up to this point is all that can be presented to Superior Court.

Mr. Noe confirmed that.

The Mayor said his opinion is that the Council should follow the same line of procedure.

Councilwoman Nichols said that means this (Mr. Hoffert's handout) would be new information and not considered.

The Mayor agreed.

Mr. Harper asked if Mr. Noe wanted other attorneys to speak. He expressed his concern that under regulatory reform that there is supposed to be only one record of the proceedings, and he believes that to be the record that was the record created at the Planning Commission level. He said he didn't want to tell the Council what they can or can't see, and if there is some desire to review this material and accept

it over his objection, that's fine, but it's his opinion that it wouldn't be consistent with regulatory reform requirements of the open record process/closed record process.

Councilman Keith Larson said he could understand Councilwoman Nichols' concern because Council has received from Mr. Hoffert and Ms. Fontaine, several letters - that's information that's not in this packet - a lot of that.

Bob Noe asked if that was information that was also put before the Planning Commission. He said the Council will be considering information the Planning Commission had before it and can reopen the record, but will be limited to the record that went to the Planning Commission.

Councilman Schmidt asked if the record that went to the Planning Commission would be the same record that would go to Superior Court.

Mr. Noe confirmed that.

Councilman Schmidt said if the Council votes one way or the other on this, the fact is that any of this other information can or cannot be added.

Mr. Noe asked if that meant to the record of the Superior Court, saying it shouldn't be.

Councilman Schmidt asked if that was the understanding of the Council.

Mr. Harper said it was his understanding.

Mr. Carmody said it was not his understanding.

Councilwoman Nichols asked if what Council Members received in their packets was everything that went to the Planning Commission, what the Planning Commission ruled on.

Mr. Sweet said that was his understanding.

Community Planner Dennis Davison said the Planning Commission made its recommendation April 7, 2008. The materials the Council should have in their packet should include only those materials received prior to April 7; any materials after that did not go before them, and he doesn't know how they got in the packet.

Frank Sweet said he thinks they were put in the packet abundance of caution at the end, reflecting claims that we don't give information to Council, and he thinks it's probably wrong to do from the legal standpoint, but it could have been right to do to keep the people from claiming we're not giving the Council information. He said it would appear that anything dated after the Planning Commission made a decision or recommendation to this Council should not be considered or the Council should open everything up again and take new testimony.

Mayor Jones said we'll start at "Ground Zero."

Mr. Sweet said the Council is trying to rule on a recommendation from a body that had this information. He called on Mr. Noe, who said he'd like to hear what Mr. Carmody (has to say).

Jamie Carmody addressed the Council, saying they have authority to accept and consider additional evidence or comment, so the beginning proposition, no matter how you characterize the hearing, they have that right. He said he doesn't know why the Council wouldn't exercise that right if they want to have other information potentially for their decision-making process. He noted, that being said, referencing his remarks about the appearance of fairness doctrine, this is initiated with an annual amendment process to the Comprehensive Plan under the Growth Management. He stated that is not a quasi-judicial process; that is not a process in which regulatory reform applies. He said regulatory reform applies to project specific type of processes, so the argument about closed record versus open record simply isn't applicable when considering comprehensive plan amendments. He continued, saying any record that would go to Superior Court, should anyone choose to appeal this, would be the record that's openly developed through the process at the City level, so it would include whatever the Council considered and whatever the Planning Commission considered. He said there's absolutely nothing inappropriate for that consideration. Taking it further, he asked if the information in the packet includes transcripts of testimony provided to the Planning Commission, because that is every bit as much evidence as the written documents, and if the Council is going to make a decision based upon the limited record before the Planning Commission, they should have all of the evidence, not just part of the evidence. He said the most appropriate and efficient way to incorporate and get the ideas of the testimony is through testimony and arguments used today, creating a full, balanced record.

Councilwoman Nichols said she didn't think they have that.

City Supervisor Sweet said Mr. Noe should advise the Council of basically what their options are.

Councilman Keith Larson said as a matter of clarification, of one particular parcel the Hearing Examiner ruled on the Class 1 use and the rezoned, and that is the issue that is now being appealed to Superior Court.

Mr. Noe said that is correct, the SEPA and the Class 1.

Councilman Larson continued, that is separate issue from this plan amendment.

Mr. Noe confirmed.

Councilman Larson said the Council is being asked today to support or not support the Planning Commission's recommendation of denial of changing that UGA.

Mr. Sweet and Mr. Noe corrected "UGA" to "Comp Plan."

Mayor Jones volunteered to start off, noting he was a part of the Planning Commission and headed up the "Affordable Housing" committee. He said they worked long and hard, many, many hours starting down at Tree Top in their conference room, and it went for months and months and years before they accomplished that Comprehensive Plan. He said the property that is in question at that time was very overgrown; it had been used as a dumping ground and was basically down in a hollow. He said his committee was required to create X number of areas for multiple dwelling, since we had population for low-income housing.

At this point Mr. Carmody raised objection.

Mr. Noe said the Mayor was basically testifying now, and if the Council wants to reopen the record, he could testify, but the Council is just going to look at the recommendation (of the Planning Commission).

Mayor Jones withdrew his remarks.

Councilwoman Denise Nichols said she would jump in on something she would like some clarity on, the Planning Commission ruled that there had not been a change in circumstance. She said her concern is that when all of these signatures came forward to ask for consideration of the zoning change, what is the definition of “change of circumstance”? She asked if when citizens come forward and want something looked at, is that not classified as “change of circumstance.”

The Community Planner reminded the Council that Mr. Noe had made a presentation to them and to the Planning Commission a week later what the statute (sic) said about change of circumstances.

City Attorney Bob Noe said he didn't know if there is a statute that gives much direction, but there is some case law that talks about changes in circumstances, and one of the things that is considered is public sentiment, public input about what's being requested, but, at the same time, that is balanced against what's actually occurring in the area as far as land use and development. He said he wasn't sure how the Planning Commission analyzed that aspect of it, but public sentiment is a component of that determination.

Councilwoman Nichols asked what is the public sentiment portion.

Mr. Noe said he wished he could give black and white rules on this, but really it's not. There's no bright line rule on it, and that's why it's a difficult decision to make. To determine if there is a change in circumstance, you have to look at the totality of the situation, what's happening in that neighborhood, in that area, what's the public sentiment, and those type of factors. He noted some of the other things might influence that type of determination is what is actually being constructed. He said he knows in this case part of the problem was that construction was going on while SEPA was pending and things like that, so that is a fact that can't be overlooked either is that there are certain things happening on the property as we speak.

Councilwoman Summer Derrey asked if there is stuff currently going on on the property right now, and if that is conflicting.

The City Attorney said we've been through a lot of court proceeding on this; there have been requests that the developer cease while SEPA review is going on and so forth, but we could find no legal basis on which to compel that. The developer kind of went forward at their own risk while the SEPA thing was pending, so there's not much more he can comment on.

Councilwoman Denise Nichols said looking at the map on the back page, and looking at the recommendation #1. She read, “The proposed plan amendment and rezone to Low Density Residential and Single Family Residential (R-1) zoning is inconsistent with the goals and policies of the comprehensive plan.” She said R-1 is all around this property or real close to it, and she expressed concern about saying that it is “inconsistent.” She said she was not sure if she agreed with that personally, that it is “inconsistent.”

Community Planner Davison told Councilwoman Nichols that the property south of Southern is zoned R-1 single family residential, the property to the east of Fifth is zoned two-family residential, the property immediately to the north of the two parcels owned by Mr. Torkelson, the one that abuts Fifth is zoned (R-3) multi-family residential, the northwest is single family residential, and the extreme west is Yakima County.

The Councilwoman said what the Planner is saying is that it is mixed.

The Community Planner agreed.

The Councilwoman asked how it could be “inconsistent” then, how could they rule that it was inconsistent when you have a mixed (cough) to begin with.

Councilman Keith Larson said if the Plan designates it as high density then any zoning that's not high density is inconsistent with that plan, he thinks it says. He added that he thinks it is designated high density in the comprehensive plan.

Councilwoman Nichols asked for explanation of #2, their denial of #2, about being incompatible with the land use designation.

Community Planner Dennis Davison, after having some difficulty finding the place, referred to page 4, the Planning Commission Recommendations, he read, “The proposed plan amendment and rezone are incompatible with the land use designation and zoning classification of adjacent lands to the North and East.”

Councilwoman Nichols asked what that means.

The Community Planner responded that they say it's incompatible, the designation and the land use and the zoning is (sic) is incompatible with property to the north and to the east.

The City Supervisor said the R-1 is incompatible with the R-2 and R-3 as specified in the plan.

The Planner interrupted, saying those amendments to low density residential to the proposed amendment to R-1 zoning would be inconsistent with the Comp Plan designation and the zoning of properties to the north and to the east, which are moderate and high density, moderate and high density residential designations and R-2 and R-3 zoning designations.

Mayor Jones noted it is mind-boggling.

Councilman Keith Larson said the way he understands the Comprehensive Plan, though he was not involved in its development and came on Council right after that was adopted, his understanding is that there was an awful lot of public input and work that went into developing that Plan. He noted it was required by the state that we have that plan. He said in order for someone to amend that plan, it's set up in such a way the not just anyone can walk in and say, “Oh, I'd like to change that designation of this land,” they have to show a need or change in circumstance to make the change. He said he understands that, you spend ten years coming up with a plan and then someone walks in and says, “I don't like it, that should be changed, I don't want it that way.” He said in looking at the information he has here, he has a hard time not agreeing with the Planning Commission that this amendment should be denied. **He moved approval of the Planning Commission's recommendation.**

Mr. Carmody asked if the Mayor was not going to allow any comment or testimony.

The Mayor and City Supervisor both said no.

Mr. Carmody expressed objection, saying he thought he had a right to address the Council on each of these points whether it is a quasi-judicial process or not.

Mayor Jones asked for advice from the City Attorney.

Bob Noe said he believed the Council decided that they were just going to review the closed record, so that means the record is closed, otherwise the Mayor's testimony would have continued earlier as well.

Mr. Carmody stated that even though the Council may have decided to make it a closed record, he is entitled to address the Council with respect to the evidence and the decision, recommendation that was made at the Planning Commission level, that is not new evidence. He stressed that he was entitled to do so.

Mr. Noe asked if Mr. Carmody just wanted to make argument.

Mr. Carmody responded in the affirmative.

Mr. Noe said argument is fine.

Mr. Harper asked if that wasn't done at the Planning Commission point.

Mayor Jones said he thought the argument would go on to Superior Court.

Mr. Carmody and the Mayor were both speaking.

Mayor Jones said he thought it was already established that this would go on to Superior Court.

Mr. Carmody asked if anyone on the Council had any idea of what his argument was before the Planning Commission.

There ensued garbled conversation.

**Councilman Keith Larson, asking permission of Mr. Carmody, finished his motion, moving to approve the Planning Commissions' Findings and deny the Comprehensive Plan amendment 2006-1. The motion died for lack of a second.**

Mr. Noe asked if Mr. Carmody made argument to the Planning Commission, noting he didn't see it in the minutes.

The City Supervisor told Mr. Noe that if the minutes are not complete with Mr. Carmody's arguments, this decision should be delayed until there are minutes that reflect his points.

Mr. Noe responded that if Mr. Carmody made argument to the Planning Commission, he doesn't see where it is reflected any of the stuff because he doesn't even see it reflected that Mr. Carmody was present.

Mr. Carmody said he was present, and he probably spoke.

Mr. Harper said they seem to be hung up on this, and his copy of the packet has all the testimony transcribed. He noted he pulled his copy off the internet today, and Mr. Carmody is plain, it has him

speaking plainly. He said he just wanted to make that clear and to the City Manager (sic) City Supervisor.

The Administrative Assistant stated the testimony is in the February 6, 2008 minutes.

Mr. Harper confirmed that it was February 6.

City Supervisor Sweet noted Mr. Carmody's points of argument are in the minutes in the packet, so Council Members do have complete minutes of that meeting.

**Councilman Herb Schmidt made a motion to move in opposition to adopting the Selah Planning Commission recommendation. (unclear). He said he just made a motion to reject the resolution adopting the Planning Commission recommendation.**

**Councilwoman Denise Nichols seconded the motion**

Mayor Jones said we have a motion and a second as stated and asked the Administrative Assistant to poll the Council.

Councilman Larson asked for discussion, for clarification, asking if the issue would now go back to the Planning Commission for further study.

The City Attorney asked if the motion is actually to reverse the decision.

Councilman Schmidt said it is not to support the adoption.

The City Supervisor asked if it is to reject it or is it to reject it and approve the Comp Plan amendment.

Councilman Schmidt said no, the resolution is to reject the adopting of the Selah Planning Commission recommendation of denial.

Mr. Noe asked if the Councilman is asking that it be remanded.

Councilman Schmidt said Agenda Item M-1 and so you've got all the information, and so what you're doing is that's what you asked us to do either say up or down.

Councilman Larson said the Planning Commission's recommendation is to deny this amendment, and if he is understanding Councilman Schmidt, his motion is to approve the amendment.

Councilman Schmidt said that's correct.

Councilwoman Derry said she was still confused.

Mayor Jones said Councilman Schmidt's motion is to reject the decision of the Planning Commission and to update by approving the R-1 zoning of that property.

The City Supervisor said actually it would be approving the comprehensive plan amendment for the land use. He asked if it would also include rezoning the property to R-1.

Mr. Noe said he looked at the City Code 10.40 on major rezones and they are coupled. He said if you have a decision to approve a comprehensive plan amendment, it would effectuate what's classified as a major rezone and would effectuate the zoning change as well.

The City Supervisor said, so in one fell swoop, if the Council supports this will change that from an R-3 in the Comp Plan, the land use map and the zoning.

The Mayor asked if the Comp plan can only be adjusted every October.

Bob Noe said yes, once a year.

Carl Torkelson asked the Mayor and Council to help him understand this, the City is going to give him permits to build these buildings and then zone it R-1 and turn around and take them away.

Councilman Schmidt said he is only going on what he has here (the information in the Council packet).

Mr. Torkelson started to say something about going further.

Councilman Schmidt said Mr. Torkelson heard what Bob (Noe) said over here, you know, as far as the SEPA and there was a question about it and there was continuation of building. He said the information that we have as a Council all during this process has not been exactly clear and at this point he thinks it needs to be reviewed so that there's no question about it particularly when there's a factor of going to the Superior Court. He said he cannot feel comfortable about rendering this at this point if there's a question about its going to the Superior Court, and that's basically where we are.

Everyone talks at once.

Mayor Jones struck the gavel and said the discussion will come back to Council.

Frank Sweet asked Mr. Noe to clarify, if the Council supports the Councilman's motion what will happen to the existing permits and the building that is going on on those properties.

The City Attorney said in his opinion is that those are vested; the zoning does not retroactively repeal or revoke those premises.

The City Supervisor asked if something were to happen to those buildings, would they be allowed to be rebuilt or would the R-1 zoning kick in.

Mr. Noe said he would need to look at our ordinances on non-conforming structures, non-conforming uses. He said while he was unsure of what Selah's ordinance says, but typically, most of them say if there's more than 75% of damage then they have to be consistent with the zone, if it's less than that then they can continue in the zone. He said he didn't know what our (ordinance) specifically says.

Councilwoman Nichols asked what is meant by "damage."

Mr. Noe gave the example of an apartment structure and the zoning changes to R-1 and it burns in a fire and it's 80% damaged by the fire, he would not be able to build the apartment again, he would have to build a single-family residence there because the non-conforming status would lapse. He said again he didn't know what Selah's ordinance says.

Public Works Director Joe Henne said it (Selah's ordinance) says that.

Councilman Schmidt made a motion to call for the question.

Mayor Jones called on Attorney Ken Harper.

Ken Harper requested an opportunity to make legal argument, saying he thought there is a right to make legal argument, and he would have the same objection Mr. Carmody would have had if he hadn't had the chance to make that presentation. He said for the record he is requesting a chance to make legal argument on the rezone and on the comp plan redesignation. He said he felt entitled to go on record, and that being said, he turned it back to Mayor Jones.

Councilwoman Nichols asked the Mayor what would happen if they put this on hold.

Mayor Jones asked the City Attorney whether it would go to Superior Court if it is tabled.

Bob Noe responded that if it were tabled, it would just come back to the Council.

Several people talking at once.

Frank Sweet said they would just get it back.

Councilman Larson said the Council is setting a precedent here as to what has to happen for the comprehensive plan to be amended.

Councilman Schmidt asked if this means that the comprehensive plan can't be delayed until October for a change on it.

Councilwoman Nichols asked if it would go back for a Public Hearing.

Councilman Schmidt said, "that's correct."

Councilwoman Nichols said, "in October."

The City Supervisor said he wasn't sure what she's asking.

Community Planner Dennis Davison stated this plan amendment before the Council did start back in October of 2006, the Planning Commission continued several times, and the Council remanded it back to make a decision not wanting to hear another continuance, so the Planning Commission did that the first part of this year, so it's technically a part of the Comprehensive Plan amendment of 2006-1 which started way back in the fall of 2006. He said for the Council to table it, technically not equaling a decision, there's nothing to appeal yet, so, unfortunately the Council has to make a decision one way or the other, so the attorneys in favor and against can work their magic appeals.

Mayor Jones called on the Public Works Director, asking him to bring the Council up to date on the "non-conforming process."

Public Works Director Joe Henne stated in Selah's ordinance it says a legal non-conforming use is allowed to remain a legal non-conforming use until there has been 75% damage, so if you're a business

in an R-1 zone you can conduct business until there's been 75% damage and then any new construction must conform to whatever the zone is.

Mr. Harper asked for a point of order, wanting the record to be clear whether or not he would be allowed to make oral argument, just so his objection is clarified whether the Council is allowing or not allowing oral presentation of legal argument.

The City Attorney said, as he stated earlier, that he thinks legal argument is acceptable. He said he didn't think they could have testimony, but argument is fine, and the Council could limit argument to five minutes, ten minutes, whatever the Council deemed appropriate.

Mayor Jones called on Attorney Jamie Carmody, asking him if five minutes is enough time.

Mr. Carmody responded affirmatively, thanking the Council, saying he would prefer to be to the point and tap over the issues that are appropriate for the Council to consider. He said there are four elements to be considered. He responded to Councilman Larson's view of this, saying this is a Comprehensive Plan amendment as well as a rezone, so it's the Comprehensive Plan so the inconsistency argument is really not applicable. He noted it would be applicable if all that was before the Council was a rezone. He continued, saying with respect to the first determination on consistency with the comprehensive plan, the fact that there is an existing comprehensive plan is irrelevant to that in terms of the map. He pointed out that they've combed the record and nothing in the record of the City of Selah that reflects that this should have been and was in fact designated high density residential in the first place in 1997. He said the minutes are there and they've gone through the transcripts, but there's nothing to show this piece of property was designated in that way. But having said that, he stated that in the comprehensive plan and why they determine consistency, the comprehensive plan says to discourage rezoning which would allow incremental conversion of existing single-family dwellings to duplexes or multi-family, so the City wants to preserve and protect single families, wants to encourage new residential development to approximate existing residential densities and housing mix levels. He stated in this case you'd have predominant single-family in the area, and that should be what's reflected here, so it's consistent with that. He said you should encourage net combined density of all development to remain at present levels, so you want to preserve and protect the sanctity of existing residential neighborhoods and that you want to, when considering high density, take a look at traffic access, those type (sic) of things. He explained that that's what the comprehensive plan provides, in this case, he knows that First and Southern doesn't function at appropriate levels of service, so higher density aggravates that problem while lower density deals with it more effectively. He stated the proposed amendment of single-family is consistent with every aspect of the comprehensive plan. He said he had no idea of what their (the Planning Commission's) thinking on inconsistency was in this determination. He expressed his belief that the comments Council Member Nichols made were appropriate, so that you have a mixed area, so you're not inconsistent with anything potentially arguably inconsistent, if that analysis was (sic) applied, it should never have been high-density in the first place, but there if there is an inconsistency with comprehensive plan, you can't find that. He stated his belief that it's consistent and the proposal is consistent. The second issue Mr. Carmody addressed was the consistency with adjacent neighborhoods. He said it absolutely is consistent with existing neighborhoods, single-family predominant and that's what this is and that should carry forward. He said it was an interesting comment that this is a bit of an "island," because that's what you call "spot zoning," so that part of a test is there. He said Council Member Nichols asked an appropriate question about change of circumstance. He said Mr. Noe was absolutely correct in saying that the courts in case law in this state gives guidance for changed circumstances, and changes in public attitude, changes in feelings of the community are appropriate consideration for changed circumstances. He cited a Yakima County case called Bassani vs. Yakima County, and it stands for that proposition. He said he wanted to take it a step further to a more important purpose in

changed circumstances. He said the Growth Management Act contemplates and allows annual reviews; it allows people to come forward each year; it's supposed to be an iterative process, and one thing about Growth Management is that it is a bottom up planning process, it comes from the citizens, it comes from the public, and if Growth Management says that's how we're going to plan and that's how we're going to guide our community, clearly, a strong community statement that they don't agree with the zoning or they want to change the comprehensive plan is consistent with and in the spirit of the Growth Management Act, so that you have it both in terms of changed circumstances and in terms of the Growth Management Act direction. He said whether there are existing permits are separate issues, noting Council Member Larson was correct about that, all that's gone on and all the other litigation is a separate matter. He said whether he (Mr. Torkelson) has vested rights to the buildings that he's got and the permits are determined in a different context; this doesn't determine that one way or another, and it's in a different setting. He said this applies from the point the Council adopts it forward. He said, in commenting on Mayor Jones's view that it was adopted this October, he would disagree (Five minutes was called.) since the application was actually filed in 2006, and the requirement would have been processed by December 31, 2006, so he thought acting on it now is appropriate.

Mayor Jones thanked Mr. Carmody.

Attorney Ken Harper handed out his legal argument, noting it is extremely large, including citations, WAC's, RCW's, Comprehensive Plan provisions and all kinds of things like that in there. He stated his strong objection to the procedural posture of this, stating it is important to get that on the record. He said there are a couple of things that are wrong with this before City Council under the present circumstances. He noted Mr. Carmody identified this as a comprehensive plan action, stating that is correct in part and it is also a site-specific rezone. He stated GMA specifically says all comprehensive plan amendments must be processed concurrently. He noted this action rises out of a 2006 comprehensive request of South Selah Neighborhood Association. The 2006 amendments have already been processed, except this one. He noted the Council has no other comprehensive plan requests before them. He said that is a clear violation of GMA because they are not processing all of the comprehensive plan amendments concurrently so that they can understand the ramifications of each comprehensive plan amendment in relation to the others. He said he would defer to Mr. Noe for Council's legal advice, but he said that is as clear cut as GMA gets. He said the second point of law is there is no SEPA record before the Council regarding the significance of this comprehensive plan application or this rezone application. He said the SEPA record that is in the packet is a SEPA determination associated with the 2006 amendments as a whole. He said this proposal was begun in 2006 and it was reinitiated in 2007 with a rezone component to it. He said there is no SEPA record addressing the rezone component, so he objected to the procedural posture of this being considered out of cycle with the rest of the comprehensive plan for 2006. He said it's out of cycle with the rest of the comprehensive plan of 2007; there's no adequate SEPA record. He stated, having said that and preserved his record, he would tell the Council why he thought the Planning Commission got it right. He said the most important thing the Planning Commission recognized is that these map designations reflect policy text choices, that is to say that in the Comprehensive Plan, the City has made policy choices that are reflected on the map, and when we talk about inconsistencies, we can't think just of consistency between map colors, we have to think of what those map colors signify with respect to the text of the comprehensive plan. He said this was argued to the Planning Commission and it's in the minutes. He read from p. 35 of the Comprehensive Plan, "it is the intent and desire of Selah that its low density neighborhoods develop with a mix of housing types including single-family, duplexes, townhouses and multi-family dwellings." He reiterated "a mix" within "single-family." He said the comprehensive plan also identifies an inventory of existing Selah type land and a deficit for new types of land that we need. He referenced Table 3-4 of page 33 which shows less high-density residential as a percentage of land forecast inventory than any other type of land, and a surplus of single-family and medium-family residential, so

the deficit in favor denying this application; the deficit is in favor of adding more multi-family residential. He stated this is a living document, as Mr. Carmody knows, and if in the 2008 comprehensive plan there is an amendment to change this land use inventory, for, collectively, for Selah to say, "we really don't think we have a deficit of multi-family residences," that's fair game, but so long as you have identified this land use inventory, as long as you have this deficit, it is inconsistent to take more land out of multi-family residential - that's the category you already have a deficit. He said that's why he thinks the Planning Commission got it right, it was all developed at some length, we're going (five minute was called) to create spot zones if we pull it back out of multi-family residential. He noted he's run out of time. He stated his appreciation for a chance to address the Council.

Mayor Jones thanked Mr. Harper.

Council Member Nichols said a lot of this occurred before she came on Council, and over the two years she's been on there have been lots of little things have come to the Council, lots of little bits and pieces. She said she is personally concerned because it appears, her perception, that there were a number of things that didn't quite go right on the City's side. She said she's questioning whether notice was given properly, whether people had an opportunity to weigh in on this, and just a few of the things that came back to us and was (sic) on the record is troubling that there were some errors made. She noted a former Council Person admitted that to a group. She said she was sorry that that happened, and she guessed that's kind of what she is basing her opinion on. She said she's not pro or con high-density low-density. She said she is concerned about is there's a neighborhood that she believes was not properly kept in the loop, and in her opinion there have been a number of little blunders that have occurred all along. She said now this neighborhood wants to get reconsidered to be changing R-1, and she thinks they have a right to come forward and request that. She said she understands that the properties under development aren't going to be, their permits are not going to be taken away, and said she is troubled that that last permit was even issued to that developer, that should not have happened in her opinion. She said she thinks the property owners have a right to come forward and to say circumstances have changed. She said the Growth Management Act allows for yearly changes to be made on this and she believes that citizens have a right to come forward, particularly as they have done over the past two years to request Council consideration to change that zoning. She said that's why she is going to vote to not accept the Planning Commission recommendation. She said that is her opinion, and she appreciates what Ken Harper said and thinks that's right, but, you know, where is all this SEPA record, there just seems to be a number of things that happen inconsistent (sic) in this whole process. She said she hopes, well, she's said what she's going to say.

Council Member Schmidt said he'd like to also support what Denise (Council Member Nichols) has just said, but in addition to that, he'd like to say, you know, we are a community, we are, and he thinks each one of us has a responsibility to listen and have a relationship with one another in a way that is not always cast in litigation, and, consequently, it's too bad when this happens then you end up with a lot of hard feelings and turmoil and sometimes a difficulty in making a decision that everyone feels fair about. He said, but in saying this, he really feels that there were some mistakes made, in that he thinks that one of the ways in which we have to err, if we are going to err, is support of the community. He said he believes, too, that it is just not a matter of high density or low density, and agrees with Denise (Council Member Nichols) on that. He said it is a matter of what's right is right, and he thinks we have to err that way, so he would call for a motion on question.

Mayor Jones asked Councilman Larson if he had anything.

Carl Torkelson asked to speak. He addressed the Council, saying he is the one with the most to lose here.

Mayor Jones indicated that Mr. Torkelson's time will also be limited to five minutes, noting he is trying to be fair to everyone, and this will be the last speaker.

Mr. Torkelson said he went through this process knowing that he was doing so at his own risk, but he owns two pieces of property, and 503 is not under appeal. He said 503 Southern has building permits, and he doesn't feel he is building at his own risk on that property. He said he would like to bring to light that by actually rezoning this property, in essence, what would happen if it all went the other way, in his opinion, is it appears taken from himself and his brother. He stated 503 has no litigation on it, there is no appeal on it; they have straight permits on it and are building those properties right now and are working on it. He said he finds it amazing the City would give permits to work on a particular piece of property and give the zoning to that property and turn around and take it away and put him in a situation where he has trouble financing, has trouble with insurance. He said the Council is opening all these issues that the Council is not even looking at in today's meeting that affect him (and his company). He said he finds it an almost good old fashioned "Here, we're going to let you do this, and now we're going to take it away, and now we're going to put you in a real compromised position." He said it puts a real legal strain on the whole situation. He said another thing he'd like to bring to light is we had Planning Commissions before this for years and years making this comprehensive plan and we have the Planning Commission just recently go through the whole process and look at it, and now we're boiling down to the vote of three people. He asked if those three people know more than everybody else that have actually went (sic) through this whole process and struggled and worked and did all this effort and now we're going down to three people and their opinions. He called it a travesty, saying he finds that amazing. He suggested, at best, if we have questions, he thinks we should research it, get a little deeper into it. He suggested the Council question what happened back then and what we've been doing right along. He said as far as the property at 605, they have paid thousands and thousands of dollars for SEPA's for traffic studies, for reviews for professionals to come back and fight this in court. He said he doesn't know if they have one engineered document. He said they have done what they thought they had to do due to the fact this was zoned R-3, it is zoned R-3, and they are going forward with what they feel is right, and this is how they make their living, and this is how they survive. He said it is not just a game to them. He said they (he and his company) are not just a group of four people who say they are ninety, but if you go back and research the ninety people and ask them how they sit on the fence; he's not sure all of them will say yes. He said he thinks they (SSNA) went around and made a petition and maybe didn't give quite all the facts and it's gotten a lot bigger since then, a lot deeper. He said he'd like to know how big the opposition group really is. He said he only sees four or five people sitting in this facility when it comes time for the Planning Commission, when it comes time for this Council. He asked, "where is everybody else? Where are they, the concerned citizens?" He said if we're talking about hearing the citizens, where are they if they're so concerned? He said he turns around and doesn't see everybody. He reiterated that at 503, they are not building at their own risk, they're building on a piece of R-3 property that has no litigation, that's been given permits, and if it's reversed then they are going to have trouble with financing, insurance, all sorts of issues going right down the line, and will cost them thousands and thousands of dollars. He said he's bringing that to light because that is what the Council is doing to them.

Councilman Schmidt said he thought that what was stated here was what was issued already would not take away from Mr. Torkelson, presently, with what Mr. Torkelson was doing.

Mr. Torkelson said the Council is trying to rezone both of those properties, 503 and 605 Southern, and 503 is not under appeal, so what the Council is trying to do is to reverse 503 Southern to R-1, which, yes, they have building permits on, but they're not under any kind of legal battle on that, they are simply doing what they do for a living, making a living, being contractors, speculating, increasing the value of

your city, hundreds and hundreds of houses that he and his brother have built here between them, good quality houses, good quality neighborhoods, and now they're going to boil down to three people to tell them that they have hundreds of thousands dollars into projects and now it's going to be reversed and taken from them. Again, he said he is amazed.

Mr. Torkelson's brother, Joe Kelly added that they somehow should be compensated for those losses, and they don't feel that this is an issue that is going to go away.

Mayor Jones said he was on the Planning Commission, a lot of hours were spent as they tried to mix and match and did the best they could with what they had. He noted they were all open meetings, and again, until something affects you directly, nobody shows up, so basically you talk to that back wall a lot, and where they met there was an absence of people to testify, so they did what they thought was best. He said they looked at topography, taking everything into consideration, and that's what happened. He called for the question.

The Administrative Assistant asked Mr. Noe for clarification on the motion.

City Attorney Bob Noe clarified that the motion is to not follow the recommendation of the Planning Commission and to approve the request.

Council Member Derrey asked, "Approve the request for what?"

Mr. Noe said to approve the request for the rezone, to approve the Comp Plan (Future Land Use) redesignation and the rezone. Mr. Noe said as he understood Councilman Schmidt's motion, it was to reject the recommendation from the Planning Commission and to approve the requested Comp Plan redesignation and accompanying rezone request.

Councilman Schmidt said the City Attorney's interpretation is correct in reflecting the ....

The Administrative Assistant said she could not hear the last part of the Councilman's statement.

Councilman Schmidt said he asked for a rejection of the adopting of the Selah Planning Commission's recommendation of denial for the Selah Urban Growth Area Comprehensive Plan amendment, so it's a rejection of.....

The City Attorney said that is different from what he just said.

It was generally agreed that the wording was confusing.

Councilman Schmidt said if the wording was not specific enough, that's.....

Council Member Derry asked if the Council was going with the City Attorney's wording or the Councilman's wording.

Mr. Sweet pointed out that it was the Councilman's motion.

**Councilman Schmidt said that he originally made a motion to deny the Resolution Adopting the Selah Planning Commission recommendation of denial, and that this would result in a rezone to R-1 and the adoption of the Comp Plan Amendment. Roll was called: Council Member Schmidt**

– yes; Council Member Larson – no; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried 3 to 1 with Councilman Larson voting no.

Mayor Jones thanked all for their testimony, saying he had tried to be fair to everybody. He said this is a complicated issue with lots of opinions.

Council Members Tierney and Overby returned to the meeting.

2. Resolution Authorizing the Mayor To Sign the Andrews Outside Utility Agreement (OUA 171.46.08-01)

Public Works Director Joe Henne addressed Resolution M-2, directing Council Members' attention to the map on the last page of their document. He identified the hash-marked parcel next to Wenas Road as the Andrews' property. He said, when the State was widening that road, they damaged the septic system. He said the City had already planned to extend the City sewer along Taylor Loop Road, and the State will pay for outside utility agreement for Andrews, who have signed the notarized OUA. He said while this property is outside the City limits, and, at this time there are no plans for annexation, it is within the urban growth boundary.

In response to a question from Councilwoman Derrey, Mayor Jones explained that the City does not initiate annexations, rather residents of an area come to the City with a petition for annexation with 75% approval of area residents.

Councilman Schmidt said he keeps hearing different figures on that. The Public Works Director clarified that the approval of area residents is 60% by statute, but Council likes to see 75%.

**Councilwoman Nichols moved approval of the Resolution Authorizing the Mayor To Sign the Andrews Outside Utility Agreement (OUA 171.46.08-01). Councilman Tierney seconded. Roll was called: Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

3. Resolution Approving Payment to Columbia Asphalt & Gravel, Inc. for Work Performed through April 30, 2008 Since They Have Transmitted the Required Approved "Intent To Pay Prevailing Wages" Form to the City

**Councilwoman Nichols moved approval of the Resolution Approving Payment to Columbia Asphalt & Gravel, Inc. for Work Performed through April 30, 2008 Since They Have Transmitted the Required Approved "Intent To Pay Prevailing Wages" Form to the City. Councilman Larson seconded.**

Councilman Schmidt asked why we use the word "intent."

Clerk/Treasurer Novobielski responded that the form is called "Intent To Pay Prevailing Wage," and at the completion of the project there is another form called the "Affidavit of Prevailing Wage."

Councilwoman Derrey asked if the prevailing wage is for Yakima County or the State.

The Clerk/Treasurer responded that it varies by County.

**Roll was called: Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

4. Resolution Declaring Miscellaneous City Property as Surplus and Authorizing Its Disposal

**Councilman Schmidt moved approval of the Resolution Declaring Miscellaneous City Property as Surplus and Authorizing Its Disposal. Councilwoman Nichols seconded.**

Councilwoman Derrey asked how the City advertises surplus.

The City Supervisor said they could run an ad, but normally they try to determine a value for it. He noted the computer is pretty old. He said they'll like find it a home at the Youth Center or something like that.

Councilman Tierney asked if the memory has been erased.

The City Supervisor said the hard drive has been completely erased.

Councilwoman Nichols asked if we have policies stating that City employees cannot bid on surplussed items.

The City Supervisor said he didn't believe we had such a policy.

Councilman Schmidt said we probably should have such a policy.

The City Supervisor said if the Council wishes to add a caveat that City employees should not be allowed to make a bid on these items, that would be fine.

**Councilwoman Nichols said that would be appropriate.**

**Councilman Schmidt seconded.**

Mr. Noe said he didn't know if there was an RCW, but it does avoid the ability of an employee to use inside information or gain some advantage, so it would make sense.

The Administrative Assistant asked if that was a motion to amend.

City Attorney Noe said that if the Council wants to make that policy, we will implement it, but it doesn't need to be a part of the motion on the Resolution.

**Roll was called (on the original motion): Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

5. Resolution Approving the Final Plat of “Valhalla Heights, Phase I” (912.41.06-01)

Community Planner Dennis Davison addressed Resolution M-5, stating Council Members have before them the final plat of Valhalla Heights, Phase I, proposed by Goodlander Holdings, LLC. He said Mr.

Johnson, who has submitted the final plat to the City for approval, has submitted bonds to the City to ensure completion of the work, which includes sidewalks, street paving and two reservoirs on top of the hill to serve that subdivision with water and a waterline connecting the reservoirs to the existing system. He said Goodlander Holding LLC has submitted those bonds, and they also have to replace a rock wall that they will have completed in two weeks. He explained that if the Council approves this plat, Mr. Johnson will also have to submit a maintenance bond for a period of two years from the date of acceptance of the various things that are under construction, so if it falls apart, the City will have money to go in and replace it. The Planner explained that Mr. Johnson wishes to file this plat so that he can begin to sell lots; however, the City will not issue any building permits for individual lots until all of the utilities, all the street, all the sidewalks, the reservoirs and connecting pipes, all of the various components, all of that has to be in place prior to the issuance of any building permits.

Councilwoman Nichols asked if this was consistent the plan he submitted before.

Councilman Overby said he thought they were we waiting for reservoir plans. He asked if the City needs to have those plans first so we know if it's feasible.

Chuck Johnson said the City has those plans and they are at Huibregtse, Louman's. He said he believed the reservoir plans are ready.

The Public Works Director responded affirmatively.

Councilman Overby said the first time the Council has seen this is today, and he'd like to have had a chance to go back to the original packet to see what those conditions were. He said he'd hate to approve this and then find out the reservoir was not feasible. Mr. Johnson said the State Department of Health and the Department of Ecology have already approved the plan.

Public Works Director Henne corrected Mr. Johnson, saying the design had been approved, not the plan.

Councilman Schmidt asked where Mr. Johnson is on the development as far as the ground.

Mr. Johnson responded that everything is done in Phase 1 except for removing and replacing the retaining wall and painting. He said everything else is done: curbs, gutters, sidewalks, dry utilities, sewer, everything else, to the paving, and the retaining wall and the water system have all been bonded for.

Councilman Schmidt said there's another phase we'll get to down the road, and asked about access in addition to Goodlander.

Mr. Johnson said a requirement prior to proceeding with Phase 2 is to connect to another road. He noted this is only Phase 1.

Councilman Overby said he kind of remembers that this was a "hard sell" because the Fire Department mentioned the slope of Goodlander, and that the water was a complicated arrangement.

Councilwoman Nichols asked if it would delay the project if Council did not approve this Final Plat today, if we put it off for two weeks.

The Community Planner said it would not delay the project, but it will delay the recording of the plat.

Councilman Tierney said, as a new member, he has not had the opportunity to see any of the materials at all. He said he, and perhaps Councilwoman Derrey, would like to see some of the background material. He said he'd like to see this tabled until the next Council Meeting.

Charles Johnson, 11 E 1st Avenue Selah, addressed the Council, explaining a Plat is preliminarily approved with conditions, in this case 21 or 22 conditions. He noted, typically, this is a pretty informal hearing, and it is Public Works' job to follow up on those conditions to make sure all of those conditions are met and/or bonded for, and then it is Public Works who comes to the Council recommending adoption of the final Plat. He said he has never had a preliminary plat approval with conditions met and had anybody wanted to go back through and pick apart everything the Public Works Department has already done.

Councilman Overby said a lot of Council Members would feel more comfortable if they had a chance to review what those were in the first place, just for their own peace of mind. He said he honestly cannot remember this, because it is the first time he's seen this since the day (the Preliminary Plat was approved). He said he would have pulled it out of his own records to review it, had he known it would be on the Agenda. He assured Mr. Johnson that he has no particular prejudice or bias; he just can't remember.

Mr. Johnson said he could get a copy if the Councilman wants to go through all 21 or 22 conditions.

Again, Mr. Overby expressed that his preference is not to vote blindly on something he doesn't remember.

Councilman Schmidt told Mr. Johnson that what is being expressed here just makes it a firm decision so the Council doesn't have any questions about why they didn't ask a question or whatever else. He said he thought that was important, and if two weeks is not a big issue, he understands that when you're trying to develop something, it's really a hassle, but he thinks we've all been in that spot where things just didn't go as fast as we wanted them to.

Mayor Jones praised the job Chuck Johnson has done on this, predicting it'll be a great development, and it will be a welcome addition to the City of Selah. He explained that we have some new members on the Council who might feel a little hesitant about voting for this. He asked if two weeks would be a great hindrance for Mr. Johnson.

Councilwoman Nichols asked the Public Works Director if Mr. Johnson has met the required conditions.

Mr. Henne said that is why Mr. Johnson posted the bond.

Mr. Johnson said he has a \$2.1 million bond to cover anything that he doesn't do. He said Huibregtse, Louman has reviewed it, the City has reviewed it. He said, if he leaves town tomorrow and the plat is recorded, the City can finish what he started.

Mayor Jones says that bond puts this in a whole different light. He said the City is relieved of any risk; they went over costs and have added extra money for contingencies.

Councilwoman Nichols and Councilman Tierney withdrew their concerns.

**Councilman Larson moved approval of the Resolution Approving the Final Plat of "Valhalla Heights, Phase I" (912.41.06-01). Councilman Schmidt seconded. Roll was called: Council**

**Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

N. Ordinances

1. Ordinance Amending the 2008 Budget for Miscellaneous Expenditures

Clerk/Treasurer Dale Novobielski noted Ordinance N-1 covers May's budget adjustments. He enumerated the specific adjustments in the General Fund in the areas of Law Enforcement, Planning, Parks, Non-Departmental and in City Streets/Water/Sewer, and Marudo Land.

**Councilman Overby moved approval of the Ordinance Amending the 2008 Budget for Miscellaneous Expenditures. Councilman Larson seconded. Roll was called: Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

2. Ordinance Amending the 2008 Budget for Crime Prevention Expenditures

Police Lieutenant Stacy Dwarshuis addressed Ordinance N-2, stating the East Bartlett Block Watch group came to the Police Department requesting to put together a booth for Community Days and funding for materials on drug and crack prevention.

The City Supervisor asked if that group is working with the schools.

The Lieutenant said he didn't believe so.

**Councilman Overby moved approval of the Ordinance Amending the 2008 Budget for Crime Prevention Expenditures. Councilman Larson seconded. Roll was called: Council Member Tierney – yes; Council Member Schmidt – yes; Council Member Larson – yes; Council Member Overby – yes; Council Member Nichols – yes; Council Member Derrey – yes. Motion carried unanimously.**

O. Communications

1. Oral

P. Reports/Announcements

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

a. Report on 4 to 13-Year-Olds Participating in Sports in Selah

Clerk/Treasurer Dale Novobielski reported he sent April reports to the City Supervisor and will print them for Department Heads, and then he will provide the same information to the Finance Committee.

Community Planner Dennis Davison reported Starbucks will probably be starting construction soon, and Les Schwab has their plans in for approval. The Planner said something about 7-11 fuel tanks. He asked if Council Members would like to receive electronic copies of environmental reviews, saying he hopes to cut down paperwork. He said that amounts to an average of 10-12 pages per report, and sometimes more than one is sent each day.

Councilwoman Nichols and Councilman Tierney requested hard copies of those reports.

Councilman Schmidt asked the Community Planner if that means the Manhattan Espresso and the bookstore will both be gone as well as the block building when Starbucks is built.

The Community Planner responded affirmatively.

Public Works Director Joe Henne reported that at 2:00pm today Columbia put 814 tons of asphalt down at Carlon Park, so they'll probably get that paved tonight. He reported that the striping is complete with the County helping on the streets, everything is painted, and the pool is cleaned. He urged those present to come and get a potato at the Potato Feed Friday in the air conditioned Civic Center.

Parks & Rec Director Jeff Hagler reported the Selah Skateboard Association has the forms ready to go, and concrete will be poured tomorrow. He further reported that next week 16 teams will be coming to Selah for the 2A fastpitch tournament.

Police Lieutenant Stacy Dwarshuis reported that there will be 22 police personnel, a combination of officers and reserves from Selah's Police Department and others, will be working the parade this Saturday. He further reported having attended a meeting of the Homeland Security Grant Committee this afternoon and receiving preliminary approval of 85% funding on a grant he requested.

Councilwoman Derrey reviewed Community Days activities: the hobo feed on Thursday, potato feed on Friday, pancake feed on Saturday, and a party at the Skone's house.

Councilman Overby said he was glad the pool finally got drained. He said it looks like a good event, and, hopefully, it will be good weather.

Councilman Schmidt reported he delivered scholarship documents to the High School this morning and they went into lockdown. He said yesterday there were several boys and one girl up on vacant lot above Crusher Canyon taking cell phone pictures of each other, and he called 911. He said evidently the Police Department did respond to that. He reminded those present to attend the pancake feed at 6:00am Saturday.

Councilman Tierney asked if we have received additional information from the State on Salmon Recovery.

City Supervisor Frank Sweet reported they had a meeting last week and have another this afternoon. The Governor's office is involved, and so is Representative Ross, and they asked for our attorney not to do anything until after they met today.

Mayor Jones reported tomorrow he will sit on a committee to select a new director for EMS. He further reported that early Saturday morning he, Jimmy Morrison and Mary & Larry Davis painted all the apples in the street. He expressed the highest regard for these gentlemen who work in the streets all the time because of the frightening drivers who do not slow down or seem to know what the color orange

means. He noted 22 people, including Councilman Larson, worked on Veterans Park a week ago Saturday, laying sod taken out of the skatepark and the football field. He said he's raked a billion tons of rocks. He reported Ken Pendleton donated 2 10-yard dump trucks, a backhoe, a grader, and a roller. Allen Withrow provided a circular area and a sidewalk around it for a water feature. Steve Herke from West Valley provided a water feature with three column rock. Herb Schmidt will put in lavender on the south side. Zirkle Fruit donated some trees, and those are in. He said what money they have spent, they've tried to have people give them materials at cost. He said he's looking forward to nice weather for Community Days.

Q. Executive Session

R. Adjournment

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

The meeting adjourned at 6:17pm.

\_\_\_\_\_  
Robert L. Jones, Mayor

\_\_\_\_\_  
Paul Overby, Council Member

\_\_\_\_\_  
Summer Derrey, Council Member

\_\_\_\_\_  
Denise Nichols, Council Member

\_\_\_\_\_  
Herb Schmidt, Council Member

\_\_\_\_\_  
Keith Larson, Council Member

\_\_\_\_\_  
John Tierney, Council Member

ATTEST:

\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer