

City of Selah
Planning Commission Minutes
of
JUNE 17, 2014

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

A. Call to Order

The meeting was called to order by Chairman Quinnell at 5:30 p.m.

B. Roll Call:

Members Present: Commissioners: Miller, Torkelson, Smith, Pendleton, and Quinnell

Members Absent:

Staff Present: Dennis Davison, Community Planner; Caprise Groo, Secretary

Guests: Bob Noe, City Attorney

C. Agenda Change None

D. Communications

1. Oral -None.

2. Written – None

E. Approval of Minutes

Chairman Quinnell: Correction on the Marijuana issue on page 6. Commissioner Miller said yes with proper legislation and I agreed.

With modest correction Commissioner Miller moved to approve the minutes, Commissioner Smith seconded. The minutes were approved with a voice vote of 5/0.

F. Public Hearing

1. Old Business - None

2. New Business - None

G: General Business

1. Old Business –

a. BOWERS, DANNY

915.45.14-02

SUBDIVISION VARIANCE

913.45.14-02

SHORT PLAT

913.45.14-04

SHORT PLAT

Commissioner Quinnell defers to Mr. Davison.

Commissioner Torkelson recues himself at this time.

Mr. Davison asks if all the Commissioners have read the finding, conclusions and recommendations.

FILE NO:	915.45.14-02	SUBDIVISION VARIANCE
	913.45.14-02	SHORT PLAT
	913.45.14-04	SHORT PLAT

The applicant/proponent is Mr. Daniel Bowers. The subject property is located at 207 East Goodlander. (Parcel Numbers 181425-33029 and 33030 respectively)

Daniel Bowers has applied for a variance pursuant to Selah Municipal Code (SMC) 10.30.030. He is requesting a variance to a provision in the City's subdivision code, SMC 10.50.041(e)(3) which requires that each lot must front onto a public street. The variance, if granted would then permit him to create access via private road to the back side of his property and the lot situated there. Thereafter, he is seeking to subdivide the lots each into four separate lots. The lots created will not front a public road but would instead have access via the private road in accordance with the variance, if granted.

The Planning Commission conducted open record hearings on May 21, 2014 and May 28, 2014 to consider the applications, take testimony and consider evidence germane to the issues presented.

Thereafter, the Planning Commission voted 3-1 to approve the requested variance and to approve the short plat applications, subject to conditions. The Planning Commission directed City Staff to prepare findings, conclusions, and recommendations for the Planning Commission's review and approval.

Wherefore, the Planning Commission, having conducted the hearings described above, and having considered all of the testimony, evidence, argument for and against Mr. Bowers' applications, now enters the following, Findings, Conclusions, and Recommendations:

FINDINGS:

Because the variance request is so closely associated with the short plat applications, one set of findings are made which are applicable to both the variance request and the short plat applications.

1. The applicant/proponent is Mr. Daniel Bowers. He is the owner of the subject property.
2. The subject property is located at 207 East Goodlander. It is situated approximately six hundred (600) feet east of North 1st Street and four hundred (400) feet west of Lancaster Road.
3. Mr. Bowers' property currently consists of two lots bearing Yakima County Parcel Numbers 181425-33029 and 33030 respectively. Lot 33030 lies to the south of 33029 and it fronts East Goodlander. Lot 33029 is to the north of Lot 33030 and does not front East Goodlander, although it is a flag lot with a portion of the lot extending down to abut East Goodlander.
4. Mr. Bowers' property is a narrow but very deep lot.
5. Mr. Bowers' request for a variance in order to gain access to the northern lot, which is essentially landlocked, is not a unique request for the City of Selah. The City of Selah has considered numerous similar requests for a variance with respect to these types of narrow and deep lots and has granted those requested variances.
6. Mr. Bowers' existing parcels contain a single family residence and a riding arena. The property is zoned Two-Family Residential (R-2).
7. Regarding neighboring land uses the properties to the north of Mr. Bowers' property are being use for single family residences, to the south is Selah High School and an accessory parking lot, to the east the properties are being used for single family residences, and to the west the properties are being used for single family residences.
8. Regarding the surrounding area zoning designations, the properties to the east and west are zoned Two-Family Residential (R-2), the properties to the south are zoned One-Family Residential (R-1), and the properties to the north (which is unincorporated Yakima County) are zoned One-Family Residential (R-1).

9. The City of Selah Urban Growth Area Comprehensive Plan provides with respect to the property the following: The 'future land use map' contained in the 2005 City of Selah Urban Growth Area Comprehensive Plan designates the site and properties to the East and West as "Moderate Density Residential" providing for a maximum density of twelve (12) dwelling units per acre, properties to the South are designated Quasi Public Open Space prohibiting residential development, and properties to the North are "Low Density Residential" providing for a maximum density of five (5) dwelling units per acre.
10. The City of Selah as lead agency for environmental review in this matter under SEPA determined that Mr. Bower's proposals are categorically exempt from SEPA.
11. Basic public utilities are available to serve the site, (i.e. telephone, electricity, etc.). There is a twelve (12") inch sewer line in East Goodlander adjacent to the proposed short plats. There is also a twelve (12") inch domestic water line in East Goodlander adjacent to the proposed short plats.
12. The abutting street, East Goodlander, has two travel lanes, variable right-of-way width, sidewalk on the south street side but no street illumination, curb or gutter.
13. East Goodlander is scheduled for substantial improvement in the near future. Improvements contemplated will include widening, installation of a turning pocket at Lancaster, installation of street illumination, curb and gutters on both sides of the roadway, sidewalk replacement on the south side, and installation of a drainage system.
14. Mr. Bowers proposes to install a twenty-six (26) foot wide access and utility easement on the west side of his properties so that he can access the back lot without the necessity of that back lot fronting a public roadway. If that variance is granted, Mr. Bowers proposes that lots created through subdivision (short plat) will also be served by that access and utility easement.
15. All lots proposed will be connected to municipal utilities (i.e., water / sewer)
16. The division of the two lots into four lots each, will permit under the City's codes the construction of a duplex on each lot. At full build out, this has the potential to contribute approximately one hundred sixty (160) additional vehicle trips per day onto East Goodlander.
17. Mr. Bowers' lot, Parcel Number 33029, which abuts East Goodlander, is extremely steep rising thirty-five (35) feet in the first one-hundred fifty-five (155) feet.
18. There has been speculation provided through testimony and argument presented that Mr. Bowers is intending to develop his property at a higher density than that which is currently permitted within the R-2 zoning designation.
19. Arguments were made to the Planning Commission requesting that the Planning Commission restrict the number of lots that can be created and to restrict the type, size, or configuration of any structures that could be built on any lot that may be created.
20. The proposed short plats abut East Goodlander which is designated a "collector".
21. A sidewalk currently exists on the south side of East Goodlander.
22. Storm water drains via its natural and historical course. Storm water from the short plat will also continue to drain according to its natural and historical course. Drainage improvements are included as part to the East Goodlander improvements.
23. No open space is proposed as part of the current applications for short plat.
24. Regarding parks and recreation and playgrounds, the adjacent school grounds and Carlon Park serve the proposed short plats.

25. Regarding schools and school grounds there are public schools found throughout the community.
26. As previously noted the City has adopted a comprehensive plan that designates the subject property Moderate Density Residential allowing for continued residential development and the City in support of and consistent with the comprehensive plan has adopted a zoning ordinance and zoned the property Two Family Residential (R-2).
27. All parcels proposed to be created through the short plat will exceed the minimum lot size requirement.
28. Fire Code provisions applicable to the short plat will be followed.
29. An additional utility easement running along the east side of the Bower properties will be provided in the event side sewer lines or other utilities are better situated on the east side rather than on the west side within the access easement.

DECISION MAKING CRITERIA:

A. Subdivision Variance criteria:

Selah Municipal Code 10.30.030 provides that the Planning Commission may authorize a variance from the application of SMC 10.50.041(e)(3), which requires that all lots front a public road where such variance will not be contrary to the public interest and the City's comprehensive plan. The Planning Commission shall consider the following criteria and make findings concerning the same before a variance can be granted:

- a) That special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, do exist; and,
- b) That because of such special circumstances, strict application of this title would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity under identical zoning district classification; and,
- c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district classification in which the property is situated; and,
- d) That the special circumstances do not result from the actions of the applicant; and,
- e) That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and,
- f) That the granting of a variance will be in harmony with the general purpose and intent of this title, the specific zoning district and the comprehensive plan; and,
- g) That the administrative adjustment or administrative modification provisions of this chapter were either not applicable or were insufficient to provide the relief sought from the standards of this title.

B. Short Plat application review.

SMC 10.50.016 provides that the Planning Commission shall review short plat applications for compliance with the subdivision ordinance. The Planning Commission should consider how the proponent has addressed the following items enumerated in SMC 10.50.017 as follows:

- (1) Water mains, fire hydrants and other necessary appurtenances;
- (2) Sanitary sewer lines, manholes, and other necessary appurtenances;
- (3) Culverts and other drainage structures if required;

- (4) Sidewalks, curbs, gutters and street paving;
- (5) Appropriate dedications or easements, made if required;
- (6) All improvements shall be installed at the cost of the sub divider;
- (7) All improvements shall conform to grades and specifications established and approved by the city.

The Planning Commission also must ensure compliance with state law provision relating to subdivisions found in RCW 58.17.110.

CONCLUSIONS:

Based on the Findings set forth and applying the review criteria to those Findings, the Planning Commission makes the following Conclusions:

A. VARIANCE.

Applying the criteria that the Planning Commission must consider when addressing the variance request to the findings set forth above, the Planning Commission concludes:

a) Special circumstances applicable to the subject property, including size, shape, topography, location or surroundings exist. The property is narrow and extremely deep. Any division of the property will result in lots that do not front a public roadway; which results in the inability to subdivide a lot that would otherwise be dividable under normal circumstances. The parcel abutting East Goodlander is steep and is not conducive to ready development.

b) Due to the special circumstances described above a strict application of the code would deprive Mr. Bowers of rights and privileges enjoyed by other properties in the vicinity under identical zoning district classification. As indicated, but for the unique characteristic of this property being narrow and deep, these lots could, under normal circumstances, be divided into four lots each consistent with the City's comprehensive plan and zoning code. Several similar variances for parcel depth have been approved in the South Selah Garden Tracts. Providing Mr. Bowers with a variance would treat him consistent with others similarly situated.

c) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district classification in which the property is situated. The variance will permit access to property which is otherwise not fronting a public road. Under that circumstance the property could then be divided into lots meeting the minimum requirements of the City's zoning code. This property is within a zoning designation that permits lots of the proposed size and lots of such size are permitted and contemplated to be not materially detrimental to the public welfare or injurious to property. There is adequate infrastructure to support such lots and the welfare of the public is not compromised. The variance and lots created under the short plat applications will be consistent with surrounding uses.

d) The special circumstances described above are not the result of the actions of the applicant.

e) The variance is the minimum variance that will make possible the reasonable use of the land. The variance here applies only to the one code provision preventing the subdivision of the property. Under normal circumstances the property would be readily subdivided. This minimal variance is all that is required to permit Mr. Bowers the reasonable use of his property which is enjoyed by others.

f) The granting of a variance is in harmony with the general purpose and intent of this title, the specific zoning district and the comprehensive plan. As indicated, the variance permits for the subdivision of the property in a manner that is consistent with the subdivision code, the zoning district and the City's comprehensive plan. Such a subdivision of property is contemplated and expressly permitted.

g) Administrative adjustment or administrative modification provisions of this chapter are not applicable or are insufficient to provide the relief sought from the standards of this title. The city's administration could not grant relief for Mr. Bowers. A variance was the only process applicable and sufficient to provide relief from the strict application of the code provision.

B. SHORT PLATS.

a) Streets, roads, alleys and other public ways. The short plat abuts East Goodlander which is designated a "collector". There will be improvements made to East Goodlander including widening, installation of sidewalk curbs/gutters, installation of street illumination, and the installation of drainage improvements. The existing street infrastructure and the near term improvements are sufficient to accommodate the additional vehicular traffic that may be generated from the short plats.

b) Sidewalks. A sidewalk currently exists on the south side of East Goodlander this provides for pedestrian access and use.

c) Drainage. Storm water will continue to drain via its natural and historical course. Drainage improvements will be included in the East Goodlander improvements. The short plat will not alter historical drainage patterns, street drainage will not increase and improvement to the drainage in East Goodlander will be sufficient to address any drainage impact.

d) Water utility. A 12 inch municipal water line is located in East Goodlander adjacent to or near the short plat. Adequate municipal water is available to serve the property as it currently exists and as it is short platted including and any future development on it.

e) Sewer. A 12 inch municipal sewage collection line is located adjacent or near the short plat. Adequate municipal sewage collection facilities are available to serve the property as it currently exists and as it is short platted including any future development on it.

f) Open spaces. Though not specifically enumerated in SMC 10.50.017 but a consideration pursuant to RCW 58.17, although there is not open space currently set aside as part of the short plat proposal, adequate open space exists nearby to serve the proposed short plats (Selah High School and Carlon Park) .

g) Parks, Recreation and Playgrounds. Again, though not specifically enumerated in SMC 10.50.017 but a consideration pursuant to RCW 58.17, the adjacent school grounds and Carlon Park will serve the proposed short plats.

h) Schools and School Grounds. Again, though not specifically enumerated in SMC 10.50.017 but a consideration pursuant to RCW 58.17, public schools are found throughout the community. The proposed short plats will potentially generate additional students and demand for school facilities but such facilities are readily available at present.

i) Public Health, Safety and General Welfare. Consistent with RCW 58.17, municipal water and sewerage facilities and the municipal street system will all serve the site. The short plat can be designed to ensure adequate ability for emergency service response to the site as well. The proposal is not injurious or detrimental to the public, health, safety or general welfare.

j) Public Interest Served. Consistent with RCW 58.17, the public interest will be furthered and served by the proposed short plat. The City has adopted a comprehensive plan that designates the property Moderate Density Residential allowing for continued residential development. The City in support of that comprehensive plan has adopted a zoning ordinance and zoned the property Two Family Residential (R-2). All parcels created through the short plat process would be consistent with and in furtherance of the intent and policies of the comprehensive plan and consistent with the zoning code. All lots created would exceed the minimum lot size required in the zone.

C. RECOMMENDATIONS.

A. SUBDIVISION VARIANCE.

The Planning Commission recommends that the City Council APPROVE the variance which permits a twenty-six (26) foot wide utility / access easement to serve all lots that would not have abutting public street frontage based upon the Findings and Conclusions above.

B. Short Plats.

The Planning Commission recommends that the City Administrator APPROVE the two short plat applications based upon the Findings and Conclusions above and that the approval be subject to the following thirteen conditions:

1. Final lot dimensions, lot area, and improvements indicated on the proposed short plat map or specific conditions imposed by the Commission must substantially conform to the short plat recommended by the Planning Commission.

2. The following note must be placed on the short plat map:

The owner(s) shown hereon, or any grantees or assignees in interest, hereby covenant and agree to retain all surface water generated within the short plat on-site.

3. A twenty-six (26) foot wide easement shall be provided across the westerly twenty-six (26) feet of Lot 1A, and subsequent Lots 2A, 3A, 4A, 1B, 2B, and 3B for utility and vehicular access to all lots.

4. A ten (10) foot wide easement shall be provided across the easterly ten (10) feet of Lot 1A, and subsequent lots 2A, 3A, 4A, 1B, 2B, and 3B for utilities.

5. The short plat shall be recorded within five (5) years of the City's approval or such approval expires.

6. The recorded short plat shall provide reference of a separate, twenty six foot wide, access and utility easement in favor of Lots 2A, 3A, 4A, 1B, 2B, and 3B across Lot 1A along the westerly twenty six feet of each lot. The subject access/utility easement over and across Lot 1 and the remaining lots, EXCEPTING LOT 4B, is for the purpose of accessing, constructing, installing, maintaining and operating private utilities within the easement and the right of ingress and egress with perpetual right to enter into and upon said land for the purpose of installing and maintaining said private utilities, and also, at all times in the future, for the purpose of repairing, inspecting, making connections therewith, maintaining and operating the utilities.

The recorded short plat shall provide reference of a separate, ten foot wide, utility easement in favor of Lots 2A, 3A, 4A, 1B, 2B, and 3B across Lot 1A along the easterly ten feet of each lot. The subject access/utility easement over and across Lot 1 and the remaining lots, EXCEPTING LOT 4B, is for the purpose of accessing, constructing, installing, maintaining and operating private utilities within the easement with perpetual right to enter into and upon said land for the purpose of installing and maintaining said private utilities, and also, at all times in the future, for the purpose of repairing, inspecting, making connections therewith, maintaining and operating the utilities.

7. Short Plat 913.35.14-04 (parcel 181425-33030 shall be required to dedicate five (5) feet of right of way (plus or minus) adjacent to East Goodlander for roadway purposes such that the total of the East Goodlander right of way shall be 30 feet after dedication.

8. Within the twenty-six (26) foot wide access/utility easement shall be provided a minimum twenty (20) foot wide hard surfaced driving area extending from East Goodlander to the south lot line of proposed Lot 4B.

9. In accordance with the IFC Section 503.1 no structure will be constructed upon any of the lots using the 20 foot wide road (identified in condition 8 for access and egress) that has any portion of the structure more than 150 feet from the 20 foot road required under condition 8.

The recorded short plat shall provide reference to this restriction on the maximum distance at which a structure may be constructed upon each Lot from the access road.

10. Because the road to be provided under condition 8 will be a dead end road in excess of 150 feet in length, an approved area for turning around a fire apparatus shall be provided at 150 foot intervals along the roadway. Alternatively, a cul de sac with a 90 foot diameter can be installed at the terminus of the road. IFC 503.2.5

11. Two fire hydrants must also be installed along the road to be provided under condition 8. A fire hydrant must be provided for each 250 foot section of the road. Additionally, where hydrants are located along the road, that portion of the road must be expanded to twenty-six feet in width and the 26 wide sections shall extend and continue 20 feet north of the hydrant and 20 feet south of the hydrant's location. IFC D103.1, figure D103.1.

12. Fire lane signs as specified in the IFC D103.6 shall be posted on both sides of the road to be provided for under condition 8.

13. East Goodlander is scheduled to be improved in the near future. East Goodlander abutting parcel 181425-33030, which is the subject of a shot plat application herein, will be improved to include curb and gutter on the frontage of parcel 181425-33030. The applicant must either (1) install a sidewalk along the frontage of parcel 181425-33030 at the time that the curb and gutter are installed or immediately following installation of the curb and gutter; or, (2) the applicant must pay an amount to the City sufficient to pay for the installation of a sidewalk along the frontage of parcel 181425-33030. The amount of payment required shall represent the applicant's proportionate share of the cost of the sidewalk based on lineal footage and shall be based upon the City's engineering estimate for the costs of installation. In the event that the actual costs to install the sidewalk exceed the engineer's estimate, applicant is obligated to pay an amount in addition to the amount already paid so that sum of both payments does not exceed a total of 115% of the engineer's estimate.

Note: The short plat application requests the creation of lots in sizes that exceed the minimum required dimensions for lots within the R-2 zone. Although requested to do so by opponents of the proposed short plats, the Planning Commission is not recommending the imposition of any conditions further restricting the number of lots that be can be created as there is no legal basis to do so.

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.

Chairman Quinnell called for any changes.

Mr. Noe: The commissioners for this will be voting.

Commissioner Pendleton motioned, Commissioner Smith seconded.

Chairman Quinnell called a vote ayes carry 3-0. (3-1)

Mr. Noe had Commissioners Pendleton, Smith, and Quinnell sign the document. (Commissioner Miller)

Chairman Quinnell moved to the next order of business.

2. New Business –

- a. Adopt text amendment to Selan Municipal Code, title 10 chapter 10.28 regulating Marijuana

Commissioner Torkelson returned.

Mr. Davison discussed with the Commissioners how the vote could proceed and that all the Commissioners could vote on the finding.

Commissioner Torkelson motioned to accept the finding and Commissioner Pendleton seconded the motion.

Chairman Quinnell: I have a motion and a second to adopt the findings for the Selah Municipal Code Amendment. Ayes carry with a voice vote of 5/0.

AN ORDINANCE of the City of Selah, Washington, amending sections of Selah Municipal prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the City of Selah.

WHEREAS, prior to 1988 both federal and state law prohibited the production, processing, and dispensing of medical cannabis and both prohibited the use of marijuana for recreational purposes;

WHEREAS, in 1988 then Governor Gary Locke signed into law the Medical Cannabis Act, which provides for the use of medical marijuana by patients with qualifying medical conditions;

WHEREAS, unfortunately the Medical Cannabis Act created inconsistencies with federal law;

WHEREAS, in 2011 the state legislature passed ESSB 5073 in order to clarify issues with the Medical Cannabis Act; that bill authorized medical cannabis dispensaries, and allowed qualifying patients to participate in collective gardens to grow marijuana for medical use. The Bill specifically provided that cities could regulate and license the production, processing, and dispensing of medical marijuana within their local jurisdictions;

WHEREAS, ESSB 5073 also called for the state to regulate medical marijuana. Governor Gregoire at the time, however, vetoed all portions of the bill requiring any state regulatory action. The Governor expressed concern that state employees would be placed into a situation of violating federal law while performing the duties of their jobs;

WHEREAS, although additional legislation has been proposed with respect to medical marijuana, no further legislation has passed addressing these concerns;

WHEREAS, in November 2012 the citizens of the state approved I-502. I-502 legalizes the possession of limited amounts of marijuana by persons 21 years of age or older. I-502 had no effect on the Medical Cannabis Act;

WHEREAS, Under I-502 the Washington State Liquor Control Board (WSLCB) is authorized to license and regulate the cultivation, production, processing and retail sales of recreational marijuana;

WHEREAS, under its rulemaking authority granted under I-502 the WSLCB promulgated rules in the Washington Administrative Code (WACs) applicable to the cultivation, production and retail sales of recreational marijuana;

WHEREAS, the United States Congress previously passed the Comprehensive Drug Abuse and Prevention and Control Act of 1970. The Act created a comprehensive approach to the regulation of controlled substances and enforcement related to drugs. The Act is referred to as the Controlled Substances Act;

WHEREAS, Congress established 5 "schedules" or classifications for drugs. Drugs are placed into certain schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical or psychological consequences of abuse;

WHEREAS, the federal government has classified marijuana as a Schedule I controlled substance. To qualify as a Schedule I controlled substance there had to be a showing and it must be found that:

- (1) The substance has a "high potential for abuse"
- (2) The substance has no currently accepted medical uses for treatment

(3) And that there is a lack of accepted safety for use of the drug under medical supervision;

WHEREAS, the Controlled Substance Act makes it illegal to knowingly or intentionally “manufacture, distribute, or dispense a controlled substance”;

WHEREAS, the United States Supreme Court had occasion to consider the Controlled Substance Act and its interaction with state laws. The Supreme Court found that under the Commerce Clause of the Constitution, the federal government could properly regulate marijuana as a Schedule I controlled substance and that under the Supremacy Clause, the provisions of the federal Controlled Substances Act prevail over any conflicting state laws. *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005);

WHEREAS, the Washington State Attorney General issued Formal Opinion, AGO 2014 No. 2 finding that cities can regulate marijuana cultivation, production and retail through land use controls and other regulatory means. This includes the ability of cities to ban such within their jurisdictions;

WHEREAS, as part of the regulations that the WSLCB promulgated, the WSLCB specifically provides at WAC 314-55-020(11) that:

The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including but not limited to: building and fire codes, zoning ordinances, and business licensing regulations.

WHEREAS, the Washington State Constitution at Article 11, Section 11 provides general police powers to cities and authorizes cities to adopt land use controls and regulate land within their respective jurisdictions;

WHEREAS the Growth Management Act, RCW 36.70A, specifically empowers cities to develop and adopt land use controls within their jurisdictions;

WHEREAS, public safety officials have indicated that there will be secondary impacts associated with the recreational use, cultivation, production, processing, and sale of marijuana;

WHEREAS, there are documented secondary effects from analogous medical marijuana dispensaries in other cities and counties including the crimes of murder, robbery, burglary, drug dealing, sales to minors, loitering, heavy foot and vehicular traffic, increase noise, odors, and health hazards such as the proliferation of molds; See, “White Paper on Marijuana Dispensaries,” California Police Chiefs Association’s Task Force on Marijuana Dispensaries (April 22, 2009) and *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal. 4th 729, 756 (2103);

WHEREAS, there are impacts that will be visited upon local jurisdictions due to I-502 and those secondary impacts may not yet be fully known; but it is certain that there will be a need for increased public safety efforts and, although, the state provides for a 25% taxation scheme on the production and retail of marijuana, none of that tax money will come to local jurisdictions who are tasked with addressing such impacts locally;

WHEREAS, a significant safety concern is presented because money generated by cultivators, producers, processors, or retailers of marijuana cannot be deposited to federally insured banking institutions (there appears to be a limited ability for cultivators, producers, and processors (not retailers) to make deposits into currently one banking institution located in Spokane;

WHEREAS, large sums of money that cannot be deposited to banking institutions with appropriate safety and security measures in places presents a concern that armed robbery and or burglary could take place within the premises of such establishments. This safety concern cannot be disregarded and the City feels a responsibility to its citizenry to ensure that the banking issues are fully resolved prior to considering where, and under what conditions, if any, cultivators, producers, processors, or retailers of marijuana should be permitted within the City;

WHEREAS, the City Council cannot ignore the issues existing between the state law and federal laws (which take precedent over conflicting state laws), including among other concerns the banking concerns identified above;

WHEREAS, medical marijuana as authorized under the Medical Cannabis Act (1988) has not presented a concern of any significance to local jurisdictions since its inception in 1988. It does not appear necessary at this time that any action need be taken with respect to medical marijuana and that collective gardens, providers and medical marijuana users who are in compliance with state law should be permitted to continue to do so without the necessity of any local action to zone or otherwise regulate that activity at this time;

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

Section 1. Findings. The “whereas” recitals set forth above are hereby adopted as the City Council’s findings and are incorporated herein by this reference as if fully set forth.

Section 2. Planning Commission Recommendation Adopted. The City Council follows and adopts the recommendation of the Planning Commission to adopt this ordinance imposing a ban on the cultivation, production, processing and sale of recreational marijuana within the City;

Section 3. No effect on Medical Marijuana. The provisions of this ordinance have no effect on medical marijuana cultivation, production, processing, distributing or collective gardens as regulated under state law, RCW 69.51A.

Section 4. Sections 10.28.010 and 10.28.020 of the Selah Municipal Code amended to prohibit illegal uses.

Section 10.28.010 of the Selah Municipal Codes is amended as follows:

10.28.010 Designations

- (a) Class 1 uses listed in Title 10.28, Table A are permitted subject to review by the administrative official for compliance with Chapter 10.08 and the applicable standards of this title.
- (b) The Class 2 and Class 3 uses listed in Chapter 10.28, Table A, and all matters directly related thereto possess characteristics that warrant review consistent with S.M.C. Title 21, and Chapter 10.08, to ensure:
 - (1) Consistency with the city's comprehensive plan goals, objectives, policies and development criteria;
 - (2) The intent, character and development standards appropriate to the zoning district within which it is to be located;
 - (3) Compatibility with other uses; and
 - (4) Other relevant requirements of state or city law.
- (c) If a proposed use is to be situated on property within the jurisdictional boundaries of the city's shorelines management master program, it shall be subject to the permits and procedural requirements thereof in addition to all applicable standards of this title. If a conflict exists between the standards of the city's shoreline management master program and this title, the more restrictive provisions shall apply.
- (d) **Illegal uses are not permitted under any classification within the City of Selah. See section 10.28.020 of this Chapter.**

Section 10.28.020 of the Selah Municipal Code is amended as follows:

10.28.020 Land use table.

(a) Chapter 10.28, Table A, lists those uses which may be permitted through Class 1, II or III review in the various zoning districts defined in this title. Uses not listed in Chapter 10.28, Table A, are not permitted uses. Proposed uses not listed in Chapter 10.28, Table A, may be considered as a similar use in accordance with Section 10.28.030 Similar Uses. In addition to Chapter 10.28, Table A, reference to the individual zoning districts and, where indicated, the regulatory notes contained in Section 10.28.040 and definitions in Title 10, Appendix A, is necessary in order to determine if any specific requirements apply to the listed use.

(b) Land uses not specifically permitted in Table A are not permitted uses within any zoning district within the City of Selah unless authorized through the similar use process set forth in this Chapter.

(c) Illegal Uses Prohibited within the City.

(1) **General. Uses that are deemed illegal under local, state, or federal law are prohibited and not permitted within any zoning district within the City of Selah.**

(2) **Recreational Cannabis/Marijuana cultivation, production, processing, and retailing. The cultivation, production, processing and retail sale and retail outlets for the sale of cannabis/marijuana (all as defined under I-502, as may be codified in the Revised Code of Washington and as used in the implementing regulations in Chapter 314-55 of the Washington Administrative Code) are prohibited and not permitted within any zoning district within the City of Selah.**

Section 5. City Council to Reconsider this Ordinance. The City Council shall reconsider this ordinance at such time as the concerns relating to banking are resolved. The ability of persons or entities at every level of the process (from cultivation, production, and processing to retailing) to utilize banking institution in such a manner that the monetary proceeds generated from such establishments can be deposited safely into recognized and secure banking institutions must be resolved prior to City Council reconsideration due to the safety concerns identified in the findings herein.

Section 6. 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 7. Effective Date. This ordinance shall be in full force and effect 5 days after its passage, approval, and publication as provided by law.

Section 9. Moratoria Lifted. Any moratorium previously adopted concerning the subject matters of this Ordinance (recreational and medical marijuana) are hereby lifted and terminated effective the same date on which this Ordinance takes effect.

ORDAINED this _____ day of July, 2014.

Mayor John Gawlik

ATTEST:

Dale Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Robert F. Noe, City Attorney

Chairman Quinnell: New business (a) what taken care of now to new business (b).

b. Comprehensive Plan Amendments Schedule

Mr. Davison: This is a philosophical discussion. Mr. Davison would like the Commissioners in put on the subject. It was requested that the dead line be moved up to July this year and then go back to normal in 2015.

Discussion ensues: Concern that contractors and owners be notified of the change. If the date is to be moved can it be moved on a permanent basis? Can notices be sent out?

Proposal: Move the Comprehensive Plan Amendments schedule deadline to July 31 this year 2014 and Jan 31 for 2015. Jan 31 would become the permanent dead line.

Commissioner Miller moves to change this year's Comprehensive Plan Amendments schedule deadline to July 31 and the consecutive year's deadline to Jan 31.

Commissioner Smith seconded the motion.

Commissioner Quinnell calls for a voice vote. Ayes carry to move the deadlines with a voice vote of 5/0.

H. Reports/Announcements

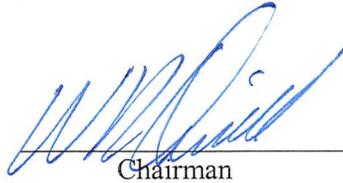
1. Chairman –
2. Commissioners –.
3. Staff –

Mr. Davison discusses the projects going on around town and how these are progressing and the time it will take to complete them.

Mr. Davison discusses the different types of inspections Mr. Brons is completing at the school.

I. Adjournment

Commissioner Miller moved to adjourn and Chairman Quinnell seconded the motion. The meeting was adjourned at 6:04 pm with a voice vote of 5-0.



Chairman