



Agenda

RICHLAND PLANNING COMMISSION WORKSHOP

City Manager's Conference Room - 505 Swift Boulevard

WEDNESDAY, August 9, 2014

7:00 p.m.

COMMISSION MEMBERS: James Utz, Chair; Carol Moser, Vice-Chair, Debbie Berkowitz; Marianne Boring, Clifford Clark; Stanley Jones; Kent Madsen, Amanda Wallner and James Wise

LIAISONS: Rick Simon, Planning and Development Services Manager
Phil Lemley, City Council

Call to Order 7:00 p.m.

Business

- 1. DISCUSSION OF E-MAIL**
- 2. DISCUSSION OF LETTER RECEIVED FROM MAYOR**
- 3. RECAP OF JUNE 25TH HEARING CONCERNING CELLTOWER**
- 4. DISCUSSION OF ZONING REGULATIONS PERTAINING TO MARIJUANA**
- 5. DISCUSSION OF HEARING EXAMINER SYSTEM OF PERMIT REVIEW**

Adjournment

Planning Commission Regular Meeting – Wednesday, August 27 2014
Planning Commission Workshop Meeting – Wednesday, September 10, 2014

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MEMORANDUM

*Community and Development Department
Planning & Development Services Division*

TO: PLANNING COMMISSION

FROM: RICK SIMON, DEVELOPMENT SERVICES MANAGER

DATE: AUGUST 13, 2014

RE: AUGUST WORKSHOP

This month's agenda includes several topics. Staff will provide an update about how the City is planning to provide a method of e-mail communication for Commission members. As requested at the Commission's last meeting, time has been set aside for Commission discussion of the letter received from the Mayor last month. Also, in response to a request from Commissioner Wise, there will be an opportunity for a 'postmortem' discussion concerning the June 25th hearing on the special use permit for the cell tower. The purpose of the discussion is to assess what might have been done differently or additionally that could have alleviated the concerns expressed by the public.

The remaining agenda items are two proposed code amendments that we have discussed previously, including the latest draft of the amendments for the hearing examiner. Also attached, is a position paper drafted by Commissioner Wise on hearing examiners. The second proposed code amendment would implement a ban on marijuana uses citywide. Both the hearing examiner and marijuana ban are scheduled for formal Commission consideration at the regular September meeting.

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July 23, 2014

Richland Planning Commission
P.O. Box 190
505 Swift Boulevard
Richland, WA 99352

RE: Richland Planning Commission – Conduct and Expectations

Dear Commissioners:

With a number of incidents coming to our attention, I have been asked by City Council to address concerns related to the conduct of the Planning Commission, and to reiterate Council's expectations of this important advisory body.

As you know, Council has a vision for the City of Richland, and has created a strategic plan to implement that vision. Just as with all other Boards and Commissions serving in an advisory capacity to City Council, we expect that the Planning Commission is aware of and supportive of Council's overall vision for the City. For us to succeed, all Boards and Commissions must be in alignment with the strategic plan and support its implementation. This is especially true of the Planning Commission, which has tremendous influence over the physical development of our City.

In addition to supporting Council's vision for the City, the Planning Commission must also conduct the business of the City in an efficient and professional manner. Council expects that all proceedings held by the Planning Commission will be fair, impartial and efficient, and that the Commission will take the steps necessary to create an atmosphere where the public feels comfortable sharing input regardless of whether the opinions offered are favored or disfavored. For some time, Council has been hearing complaints about how Planning Commission business is conducted and the behavior of individual commissioners. As an example, I have enclosed a letter from the Home Builders Association which is critical of the conduct of the Planning Commission's May 28 public hearing on the Transportation Improvement Plan (TIP).

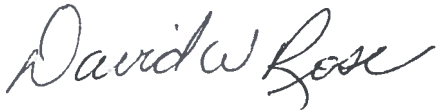
Council's expectation moving forward, as stated above, is that all meetings be conducted in an orderly fashion with respect for minority views, and that disruptions and showboating be actively discouraged. Further, Council expects all Planning Commissioners to be open-minded and unbiased in receiving information. I certainly appreciate how difficult it

can be to maintain order when a controversial issue is on the agenda, but professional decorum is a must. When Council held its hearing on the TIP weeks later, I was assisted by staff in preparing very specific procedures by which to conduct the hearing. I have requested the City Manager to direct her staff to provide similar support to the Commission.

Like most Washington cities our size, Council is considering the use of a hearing examiner in Richland. Although some commissioners apparently perceive implementation of a hearing examiner system as marginalizing the public input process, this is simply not the case. Nothing about the hearing examiner system changes the ability of the public to come forward to provide public input, nor does it change the value of that input. If the Council decides to use a hearing examiner, the Planning Commission will focus primarily on recommendations regarding the City's Comprehensive Plan and the development regulations needed to implement that plan. Council will still need a strong Planning Commission that can provide sound advice, properly represent the City Council, and tackle the important work that will most significantly influence the City's future growth.

Council understands the importance of the work assigned to the Planning Commission and asks for your help to rebuild trust and cooperation. In addition to the expectations identified above, I have enclosed a list of Council's expectations for the Planning Commission that is similar to the list discussed last fall. Council looks forward to a productive relationship with the Planning Commission as we address the planning challenges and opportunities facing our community.

Sincerely,



David W. Rose
Mayor

Enclosures

cc: Richland City Council
Cindy Johnson, City Manager
Bill King, Deputy City Manager, Community & Development Services
✓Rick Simon, Development Services Manager



Building the Tri-Cities since 1958

July 10, 2014

Richland City Council
505 Swift Blvd
Richland, WA 99352

Dear Richland City Council Members:

On behalf of the Home Builders Association of Tri-Cities (HBA), I would like to offer some unsolicited feedback on the conduct at the Richland Planning Commission meeting on May 28th. HBA staff and I attended that Planning Commission meeting and the City Council meeting on June 17th where the TIP was discussed, and the differences between those meetings were stark. While the City Council demonstrated control over the meeting and operated like a business meeting should, the Planning Commission meeting seemed more like a rally without order or decorum.

The Planning Commission didn't seem to utilize, understand, or enforce the basic Robert's Rules of Orders, by which such meetings should be conducted. They allowed people in the audience to continually clap after they heard testimony they liked, and to also express loud and disruptive negative reactions when audience members heard something they didn't like. Continuously allowing such audience reactions makes it extremely uncomfortable for others in the audience, particularly for anyone testifying, and does not promote the idea of open testifying for fear of retaliation from the audience.

I was also shocked at the behavior by one Commissioner in particular. Ms. Moser exhibited a less than professional demeanor when she made the comments (taken verbatim from the video on CityView TV, from the New Business section, beginning at 81:50): "I thought it was incomprehensible to put a road through natural open space...but there's probably a way to do it, but it's gonna to cost a lot of money so I'm hoping that the Kennewick School District has deep pockets because we're going to be coming to you for lots of money. Uhm, I hope that the County has some deep pockets because they're going to have to do something to Rachel Road to make this work..." Calling out an entity, whose purpose is to educate our children, and basically telling them they will need to help pay for a (potential) road, is improper and completely unprofessional. It is not the job of any school district to build roads nor help pay for something that is the responsibility of the City and developers.

Home Builders Association of Tri-Cities, WA
10001 W Clearwater Ave | Kennewick, WA 99336
(509) 735-2745 or (877) 842-8453 | Fax: (509) 735-8470 | www.hbatc.com

This lack of professionalism by the Planning Commission reflects negatively on the entire City of Richland, and in particular, the City Council who appoints these members. I urge the Council to bring this to light and require the Planning Commission to conduct their business meetings as the Council conducts their own, with decorum, order and respect for everyone in the audience.

Thank you for your time and your service to the citizens of Richland and our entire region. Feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff B. Losey", written over a faint horizontal line.

Jeff Losey, Executive Officer

cc: Cindy Johnson



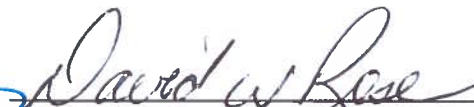
Council's Expectations for the Planning Commission

Do:

- Understand that as an appointed body, you represent the City Council and the City of Richland.
- Support the Council's Strategic Plan.
- Treat all parties having business before the Commission in a courteous and fair manner.
- Respect the time of applicants and the public by conducting business in an efficient manner.
- Strive for fairness in all proceedings, including prompt disclosure of conflicts of interest and ex parte communications/contacts with interested parties.
- Attend as many meetings as possible and notify staff if you are unable to attend.
- Prepare for meetings by reading the applications and packet materials.
- Strictly follow City procedures and codes when considering applications.
- Encourage community comments on pending applications during the public hearing and on other matters during the general comment period. Enforce proper meeting decorum and restrict inappropriate audience outbursts or unruly conduct.
- Stay on topic and only discuss matters directly related to the business before the Commission.
- Rely on professional staff for technical expertise.
- Strive for timely recommendations.
- Base your recommendations on the facts in the established record and supported by City codes, policies and/or practices.
- Clearly articulate the basis for your recommendation or decision so it will be included in the record and can be considered by City Council or as part of an appeal action.
- Advise Council of planning-related issues and opportunities which may affect the City.
- Suggest new regulations or development policies which are consistent with Council's vision for the City and will improve the quality of our built environment.
- Support City Council decisions and policies even if you personally disagree.
- Keep in mind the purpose and function of the City's Planning Commission and act accordingly.

Avoid:

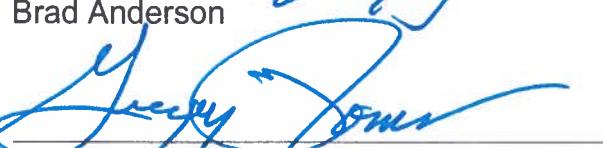
- Statements or conduct that may create the perception of bias regarding any matter which may come before the Commission.
- Conduct which may reflect poorly on the City of Richland or City Council.
- Creating personal or municipal liability by substituting your personal opinion for the determinations of professional staff.
- Making unrelated, unsupported statements which may create liability for the City.
- Laboring over insignificant details which will not improve the quality of the final recommendation.
- Sharing personal anecdotes not directly related to the facts of the pending application.
- Unnecessarily delaying action on a pending business.
- Being misled by the strong demands of special interest groups.
- Making promises on behalf of the City.
- Allowing the emotion (anger, passion, etc.) of interested parties to persuade you to render decisions that are not supported by the factual record.
- Basing decisions on policies you think the City should have if they are not in fact adopted.
- Letting honest differences of opinion degenerate into personality conflicts.
- Engaging in ex parte communications or contact which may invalidate the City's proceedings.
- Any behavior which may create the appearance of a conflict of interest.

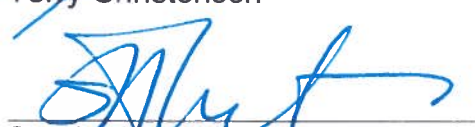

Mayor David W. Rose


Phillip Lemley, Mayor Pro Tem


Brad Anderson


Terry Christensen


Gregory L. Jones


Sandra Kent


Robert Thompson

CODE AMENDMENTS NECESSARY TO IMPLEMENT BAN ON MARIJUANA USES

Chapter 23.08

Sections:

23.08.010	Establishment of use districts.
23.08.020	Combining districts.
23.08.030	Unclassified areas.
23.08.035	Subsequent annexations.
23.08.040	Zoning map.
23.08.050	District boundaries.
23.08.060	Uses established.
23.08.065	Unclassified uses.
23.08.070	Zoning affects every structure and use.
23.08.080	Height limits.
23.08.090	Building site requirements.
23.08.100	<i>Prohibited uses</i>

23.08.010 Establishment of use districts.

In order to classify, segregate, and regulate the use of land, buildings, and structures, the city is divided into the following use districts:

PRIMARY DISTRICTS

Description	Symbol	Typical Uses
Floodplain district	FP	Pasture, recreation, agriculture
Agricultural district	AG	Agriculture, horticulture, five acre minimum subdivision
Suburban agricultural district	SAG	Residential uses 43,560 square feet minimum lot size; limited agriculture
Single-family residential district 12,000	R-1-12	Residential uses 12,000 square feet average lot size
Single-family residential district 10,000	R-1-10	Residential uses 10,000 square feet average lot size
Medium-density residential district	R-2	Residential uses 6,000 square feet minimum lot size for a single-family dwelling; 8,000 square feet for duplex dwelling
Medium-density residential – small lot use district	R-2S	Residential uses 4,000 square feet minimum lot size for detached one-family dwelling, 7,000 square feet minimum lot size for two-family dwelling, and 3,000 square feet minimum lot size for attached one-family dwelling
Multiple-family	R-3	Single-family, duplex, multifamily residential; single-family 6,000 square feet;

PRIMARY DISTRICTS

Description	Symbol	Typical Uses
residential district		duplex 8,000 square feet; multifamily 1,500 square feet per dwelling unit
Limited business district	C-LB	Offices, clubs, motels, hotels, clinics, apartments
Neighborhood retail business district	C-1	Convenience stores serving immediate neighborhood
Retail business district	C-2	Retail activities, motels, hotels, etc.
General business district	C-3	Retail-wholesale; small fabricating; used/new car sale
Central business district	CBD	Central business mixed uses
Waterfront	WF	Commercial and residential water oriented uses
Commercial winery	CW	Wineries and supporting uses
Commercial recreation	CR	Marina, resort, hotel, recreation
Medium industrial	I-M	Manufacturing district
Heavy manufacturing district	M-2	Manufacturing, warehousing and related uses
Business and commerce use district	B-C	Business and commercial uses
Business research park use district	B-RP	Business research and business park uses
Parks and public facilities	PPF	Parks, playgrounds, and public facility uses
Natural open space district	NOS	Undeveloped open space, pedestrian trails

[Ord. 28-05 § 1.02; Ord. 04-09].

23.08.020 Combining districts.

Any use district may be combined with a floodplain combining district. The use of land classified in a combined district shall be governed by the regulations relating both to the primary district and to its combining district.

[Ord. 28-05 § 1.02].

23.08.030 Unclassified areas.

All lands not classified as in one of the use districts established by RMC [23.08.010](#) on the official sectional maps and all lands, if any, in the city not shown on the official sectional maps shall be classified R-1-12 until they are specifically classified by an amendment to this title. [Ord. 28-05 § 1.02].

23.08.035 Subsequent annexations.

All lands hereafter annexed to the city shall be classified by ordinance at the time of annexation in one or more of the use districts established by RMC [23.08.010](#). Such classification shall be in accord with the comprehensive plan of the city and shall be made only after receipt by the city council of a report from the planning commission, made after a public hearing, which report shall recommend a land use plan and use district classification for such land. [Ord. 28-05 § 1.02].

23.08.040 Zoning map.

The above use districts and the boundaries of such use districts are established as shown on a series of sectional maps, numbered 1 through 64 and marked "Exhibit A." The sectional maps constitute the official zoning map of the city of Richland, which official map is by this reference made a part of this title. Such map, consisting of the sectional maps above referred to and all amendments thereto, shall be filed in the office of the city clerk. The amendment of any of the sectional maps shall be an amendment of the official zoning map. Each copy of this title, prepared by or under the direction of the city, shall include facsimiles of the sectional maps comprising the official map. [Ord. 28-05 § 1.02].

23.08.050 District boundaries.

When uncertainty exists as to the boundaries of any use district shown on the sectional maps, the following rules of construction shall apply:

- A. Where district boundaries are indicated as approximately following the centerline of streets, alleys, or highways, the actual centerline shall be construed to be the boundary.
- B. Where district boundary lines are indicated as running approximately parallel to the centerline of a street, alley, or highway, the boundary lines shall be construed to be parallel to the centerline of the street.
- C. Where district boundaries are indicated on such maps as approximately following the lot or tract lines, the actual lot or tract lines shall be construed to be the boundary of such use district.

D. Where a district boundary on such sectional maps divides a tract in unsubdivided property, the location of such use district boundary, unless the same is indicated by dimensions thereon, shall be determined by use of the scale appearing on such sectional district map.

E. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert shall apply to such vacated or abandoned street or alley.

F. In case uncertainty exists which cannot be determined by the application of the foregoing rules, the planning commission shall recommend and the city council shall determine the location of such use district boundaries. [Ord. 28-05 § 1.02].

23.08.060 Uses established.

The boundaries of such use districts as are shown upon the official zoning map of the city made a part of this title, or upon amendments thereto, are hereby adopted and approved and the regulations of this title governing the uses of land, buildings and structures, the height of buildings and structures, the size of yards about buildings and structures, and other matters as herein set forth are hereby established and declared to be in effect upon all land included within the boundaries of each and every use district shown upon the official zoning map of the city or upon amendments thereto. [Ord. 28-05 § 1.02].

23.08.065 Unclassified uses.

The administrative official may allow a use that is unlisted in the land use classification charts, if:

- A. The unlisted use is comparable with other uses in the district;
- B. The unlisted use will have no adverse effect on other permitted uses in the district;
- C. The unlisted use conforms with the purpose of the zoning for the district;
- D. The unlisted use will conform with the performance standards and other regulations applicable to other permitted uses in the district; and
- E. The unlisted use can be permitted without additional conditions.

Whenever the administrative official finds an unlisted use to be a comparable use, he/she shall make a written record of the comparable use and shall consider such written record when considering future land use proposals. [Ord. 28-05 § 1.02].

23.08.070 Zoning affects every structure and use.

No building or structure shall be erected and no existing structure or building shall be moved, altered, added to, or enlarged, nor shall any land, building, or structure or premises be used, designed or intended to be used, for any purpose or in any manner other than a use permitted by this title, or amendments thereto, as permitted in the use district in which such land, building, structure, or premises is located. ~~No land use shall be permitted or authorized which is determined by the planning manager to be in violation of any local, state, or federal law, regulation, code or ordinance.~~ [Ord. 28-05 § 1.02; Ord. 10-13 § 1.01].

23.08.080 Height limits.

No building or structure shall be erected, nor shall any existing building or structure be moved, reconstructed, or structurally altered to exceed the height limit established by this title, or amendments thereto, for the use district in which such building or structure is located. [Ord. 28-05 § 1.02].

23.08.090 Building site requirements.

No building or structure shall be erected, nor shall any building or structure be moved, altered, enlarged, or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area and yard regulations established by this title, or amendments thereto, for the use district in which such building or structure is located. No yard or other open spaces provided about any building or structure for the purpose of complying with the regulations of this title or amendments thereto shall be considered as providing a yard or open space for any other building or structure. [Ord. 28-05 § 1.02].

23.08.100 Prohibited uses.

A. In addition to uses that are specifically prohibited in Sections 23.14.030, 23.18.030, 23.22.030, 23.26.030, 23.28.030, 23.20.020 of this title, the following uses are also prohibited:

Marijuana related land uses, including marijuana retail sales, production or processing facilities, collective gardens and/or dispensaries as may be allowed under state law are expressly prohibited from locating or operating in any zone within the City of Richland.

B. No land use shall be permitted or authorized which is determined by the planning manager to be in violation of any local, state, or federal law, regulation, code or ordinance.

CODE AMENDMENTS NECESSARY TO IMPLEMENT HEARING EXAMINER SYSTEM

Titles 23,24 & 26

Title 23

23.46.025 Hearing body.

A. The ~~planning commission~~ hearing examiner shall be the hearing body to conduct the review of special use permit applications for the following uses:

1. Outdoor commercial recreation in the AG – agricultural and I-M – medium industrial districts;
2. Dormitories, fraternities, sororities, hotels and motels and residential development in the B-RP – business research park district;
3. Businesses with drive-through window service in the C-1 neighborhood retail and WF – waterfront districts;
4. Landscaping material sales and plant nurseries in the AG – agricultural district;
5. Manufactured home parks in the R-2 – medium-density residential and R-3 – multifamily residential districts;
6. Monopoles and lattice towers in the PPF – parks and public facilities, B-C – business commerce, CBD – central business district, C-2 – retail business, C-3 – general business, B-RP – business research park, I-M – medium industrial and M-2 – heavy manufacturing districts;
7. Recreational vehicle campgrounds and recreational vehicle parks in the AG – agricultural and C-3 – general business districts;
8. Sit down restaurants in the C/R-T – commercial/residential transition district;
9. Parking lots in the NOS – natural open space district;
10. Single retail businesses operating within a building space in excess of 15,000 square feet in area in the C-1 – neighborhood retail business district;
11. Telemarketing services in the B-RP – business research park district;
12. Automobile repair minor, automobile repair specialty shop, automobile service station, auto parts sales, car wash-automatic or self service, vehicle leasing/renting, vehicle sales and restaurant/drive-through in the CBD – central business district.

B. The board of adjustment shall be the hearing body to conduct the review of special use permit applications for the following uses:

1. Animal shelters, commercial kennels and animal clinics in the AG – agricultural, C-2 – central business, C-3 – general business, and I-M – medium industrial districts;

2. Automobile wrecking and the storage or sale of junk, unlicensed autos or salvage materials in the M-2 – heavy manufacturing district;
3. Bed and breakfast facilities in the single-family residential (R-1-12, R-1-10, R-2), SAG – suburban agricultural and AG – agricultural districts;
4. Day care centers in the residential (R-1-12, R-1-10, R-2, R-3), SAG – suburban agricultural, AG – agricultural, I-M – medium industrial and B-RP – business research park districts;
5. The excavating, processing, removal of topsoils, sand, gravel, rock or similar deposits in the AG – agricultural, I-M – medium industrial and M-2 – heavy manufacturing districts;
6. Public stables and riding academies in the FP – floodplain, AG – agricultural and C-3 – general business districts; and
7. Towing and vehicle impound lots in the C-3 – general business district.

23.46.060 Commission Hearing examiner or board action.

A decision on a special use permit by the ~~planning commission~~ or board of adjustment shall be by the affirmative vote of not less than a majority of the quorum of the ~~commission or board~~. A decision ~~The approval of a special use permit application~~ shall be by a recorded motion in the case of the board of adjustment or by written decision in the case of the hearing examiner. ~~A decision~~ which shall include incorporate findings of fact and refer expressly to the ordinance, or sections thereof, upon which the ~~commission's or board's~~ or hearing examiner's actions are based. Approval of a special use permit application shall authorize the administrative official to issue a special use permit. Conditions may be attached to authorization by the ~~commission or board~~ or hearing examiner that must be complied with prior to the issuance of the permit.

23.48.030 Site plan application requirements.

For any project requiring a site plan approval as identified in RMC 23.48.020(A), a site plan shall be submitted to the ~~planning commission~~ hearing examiner for review and approval as a Type II permit application as defined in RMC 19.20.030. A site plan and application form shall be submitted to the administrative official, showing the following information:

- A. Boundaries and dimensions of the property;
 - B. Location and width of boundary streets;
 - C. Dimensions, location and number of dwelling units for each existing or proposed structure on the site;
 - D. Roadways, walkways, off-street parking, and emergency vehicle access;
 - E. Fencing and landscaping, showing location, type, dimensions and character; and
 - F. Location, dimensions and character of recreational facilities and open space.
 - G. The site plan shall be drawn in a concise and accurate manner, and of an appropriate scale for clarity in review. Copies shall be submitted in a number determined by the administrative official to be appropriate and sufficient.
 - H. Where a multiple-family development is proposed to be constructed in phases, the site plan shall include all phases, regardless of size, in the proposed development. After a site plan providing for phased development has been approved by the ~~planning commission~~ hearing examiner, no further approval is required so long as each phase of development conforms to the approved site plan.
-

23.48.040 Site plan – Conditions of approval.

Site plan approvals may be made subject to any condition(s) which the ~~planning commission~~ hearing examiner determines to be necessary to protect the public health, safety and welfare or otherwise bring a proposed development into compliance with the purpose and intent of this title. Such conditions may include but are not limited to increased setbacks, and buffers, including landscaping, fences and walls; restrictions on the type and location of outdoor lighting; surfacing of parking areas and driveways; the installation of stormwater drainage facilities; the construction and location of service roads and alleys; the points of vehicular ingress or egress; the regulation of the time and type of various activities; vibration, noise, odors or similar nuisances, and the type, size and location of signs.

23.50.040 Consideration of reclassification to PUD and preliminary PUD plan.

A. Upon receipt of an application for reclassification to PUD and preliminary PUD plan approval, the administrative official shall publish a notice of hearing in a manner consistent with the requirements of Chapter 19.40 RMC and schedule the application for consideration by the ~~commission~~ hearing examiner ~~at the next available regular meeting~~. The preliminary PUD plan shall indicate:

1. Relationship of the property to the surrounding area, including identification of nearby uses and peripheral treatment of the PUD to maximize compatibility and integration of the PUD with nearby existing or proposed uses;
2. Proposed land uses and approximate building locations or buildable areas;
3. Location, arrangement and width of proposed streets and pedestrian ways, and the design and arrangement of off-street parking areas, loading areas and recreation vehicle storage areas;
4. Location, layout and conceptual design of parks, playgrounds and open spaces;
5. Location and extent of trees, watercourses, rock outcrops and any other features, indicating any significant features to be removed, improved or preserved;
6. Topography at a minimum five-foot contour interval;
7. Building heights and setbacks from property lines;
8. Preliminary architectural plans and elevations of typical buildings and structures, except single-family detached dwellings;
9. Landscape plans for open space, parks, recreation facilities, streets, parking facilities and pedestrian ways;
10. Proposed ownership pattern, including preliminary subdivision plan if property is to be subdivided;
11. The proposed method of maintaining common facilities;
12. Proposed source of water supply, electric supply, sewage disposal, and storm drainage systems;
13. General timetable of development, including a phasing schedule if the project will be developed in phases; or
14. For PUDs containing residential uses, graphic and, where necessary, written description of proposed nonresidential uses and facilities. In addition, a table shall be provided showing the total site acreage, total number of dwelling units proposed, and the dwelling unit density of adjacent subdivisions.

B. The ~~planning commission~~ hearing examiner shall conduct an open record public hearing and review of the request for reclassification to PUD and preliminary PUD plan approval as required by RMC Title [19](#) for Type III permit application. The ~~planning commission~~ hearing examiner, after public hearing, ~~on the affirmative vote of not less than a majority of the total members of the commission~~ shall recommend to the city council that the application be granted (with or without additional conditions) or denied. Such recommendation shall be based on ~~a commission~~ the hearing examiner's determination of whether:

1. The PUD district development will be compatible with nearby developments and uses;
2. Peripheral treatment ensures proper transition between PUD uses and nearby external uses and developments;
3. The development will be consistent with the comprehensive plan and with the purpose of the PUD district;
4. The development can be completed within a reasonable period of time.

C. The ~~planning commission's~~ hearing examiner's recommendation shall be by recorded motion which shall ~~incorporate~~ include the findings of fact of the ~~commission~~ with due consideration to all issues raised pro and con, and the reasons for it's the hearing examiner's action referring expressly to the maps, and other documents constituting the proposed plan and program, and matters of record. Such ~~motion~~ recommendation together with findings, maps, staff recommendation and related documents shall be submitted to the city clerk. Where the ~~commission~~ hearing examiner has recommended approval, the city attorney shall prepare an ordinance for council consideration at the same meeting at which the council considers the recommendation of the ~~planning commission~~ hearing examiner. Such ordinance shall provide for the designation of the subject property as a planned unit development district for uses enumerated on the plan subject to the proposal and additional special conditions, if any, recommended by the ~~planning commission~~ hearing examiner. The council may adopt, adopt with modifications or deny the application for reclassification to PUD and preliminary PUD plan approval.

D. Preliminary planned unit development approval shall be effective for one year from date of the second reading of the ordinance conditionally approving the preliminary planned unit development plan. The ordinance authorizing the planned unit development shall only confer development rights upon the applicant or his successor in interest upon submission and approval of a final development plan which shall be in substantial conformity with the preliminary planned unit development plan and must be submitted within one year of passage of the ordinance granting preliminary planned unit development. The petitioner shall submit to the administrative official for review within the provided time limit its final development plan as provided in the final approval section. ~~However, nothing in this section would prohibit the planning commission from requiring the applicant, as a special condition of preliminary PUD approval, to submit final development plans to the planning commission for final approval, instead of the administrative official. In such cases, the planning commission shall approve or disapprove the final development plan; provided, that such final development plan shall only be disapproved if it fails to conform substantially to the plan approved by the city council, or if the final plan conflicts with RMC [23.50.070](#) (Changes and modifications). In all other cases, the administrative official shall thereupon approve or disapprove the final development plan; provided, that such final plan shall only be disapproved if it fails to conform substantially to the plan approved by the city council, or if the final plan conflicts with RMC [23.50.070](#) (Changes and modifications). In the event such proposed plan is disapproved, the petitioner may, at his election, resubmit a modified final plan to the administrative official or the planning commission if the commission reviewed the original final PUD plan submittal, for further consideration or stand upon his proposed final plan and appeal such ruling to the planning commission hearing examiner. If the planning commission hearing examiner disapproves the final development plan, that decision shall be final unless the petitioner files a notice of appeal.~~

23.50.060 Standards and requirements.

The following standards and requirements shall apply. The city council may, on its own initiative or upon recommendation from the ~~planning commission~~ hearing examiner, establish additional requirements when necessary to secure the objectives of the ordinance codified in this chapter. Such additional requirements shall be in the form of special conditions established in the ordinance creating the PUD district.

A. For PUDs containing residential uses, the number of allowable units shall be as established on the approved development plan. Dwelling unit density shall be a net density, calculated by subtracting building and parking areas for nonresidential uses and public or private street right-of-way or easements.

B. Minimum lot area, lot dimension, building height, lot coverage, and yard requirements shall be as established on the approved development plan; provided, that development plans and conditions must clearly demonstrate, where the proposed PUD is adjacent to existing or proposed residential uses, whether separated by a street or not, that the PUD development will be in harmony with nearby residential uses.

C. Performance standards for the various uses within a PUD shall conform with standards established in the Richland Municipal Code.

23.50.070 Changes and modifications.

A. The administrative official may approve changes to a planned unit development, which in his/her judgment, are minor changes and are consistent with the approved plan. A minor modification to a planned unit development shall be any change from the previously approved plan that meets the following criteria:

1. No increase in the number of principal structures provided for in the approved plan, excluding detached single-family residential structures; and
2. No increase in the number of total dwelling units; and
3. No change in land use types to uses that were not contemplated in the approved plan; and
4. No change in the location provided in the approved plan of any structure, off-street parking or loading area, common open space area, or any area or right-of-way to be conveyed to or reserved for a public body by more than 10 percent in any direction, nor a change in the spacing between any two such structures by more than 10 percent; and
5. No change of more than 10 percent in any nonlocational quantitative specification of the previously approved plan, including:
 - a. Any dimension of any lot, yard, structure, or pedestrian or vehicular thoroughfare;
 - b. Decrease in amount of common open space acreage;
 - c. Utility line capacity, except an increase in utility line capacity to provide for other off-site development projects;
 - d. Amount of floor area of nonresidential development;
 - e. Any increase in building lot coverage;
 - f. Any decrease in the amount of land to be conveyed to or reserved for any public body; and
 - g. Decrease in amount or dimensions of proposed tree or ground cover, landscaping, or screening; and
6. No increase in building height; and
7. No substantial change in access into the site or in circulation patterns on or adjacent to the site; and
8. No other change that causes the development to fall short of meeting the requirements of the otherwise applicable zoning regulations to any greater degree than already provided on the previously approved plan; and
9. The administrative official may include conditions as a part of an approval of a minor modification to a PUD to ensure conformance with the original purpose and intent of the PUD; and

10. If a change to a condition of approval or a change similar to subsections (A)(1) through (8) of this section could have a significant detrimental impact on adjoining properties, the administrative official shall have discretion in determining that such detrimental impacts warrant review under a major modification process.

B. Any approval of a minor modification to a PUD requires a notice of decision to be mailed to all property owners within the PUD and within 300 feet of the exterior boundaries of the PUD. Such notice shall describe the proposed modifications to the PUD and shall advise the public that the administrative decision may be appealed within 10 business days of the date that such notice is mailed. Appeals of any minor modification to a PUD shall be heard by the ~~planning commission~~ hearing examiner in an open record public hearing, in accordance with the provisions established in RMC Title 19 – Development Regulation Administration. For the purposes of this section, any individual filing an appeal shall be considered a party of record.

C. A major modification to a PUD shall be any modification that does not qualify as a minor modification. A major amendment shall be considered as a new application for preliminary approval.

23.54.080 Joint use of parking facilities – Spaces required.

For joint use of parking facilities, the total number of required spaces may be reduced by 10 percent. The number may be reduced by a total of 25 percent with the approval of the ~~commission~~ board of adjustment. Under the following circumstances, further reduction may be made:

A. No more than 50 percent of the parking spaces required for a theater, church, bowling alley, dance hall, bar, restaurant, or other enterprise which is primarily a nighttime or Sunday use may be supplied by the off-street parking spaces allocable to certain other types of uses specified under RMC 23.54.020.

B. No more than 50 percent of the parking spaces required for a bank, business office, retail store, personal service shop, household equipment or furniture shop, or other enterprise which is primarily a daytime and non-Sunday use may be supplied by the off-street parking spaces allocable to certain nighttime or Sunday uses.

Application to the ~~commission~~ board of adjustment for more than 10 percent reduction shall be by letter, stating the reasons for the request.

23.70.060 Board of adjustment – Powers and duties.

The board of adjustment shall have the following powers and duties:

A. To hear and decide ~~appeals when it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this title or other ordinances granting any person a right of review or appeal to the board of adjustment;~~ requests for reduction in the number of parking spaces required when parking is jointly shared between two or more uses;

B. To hear and decide applications for special use permits for special uses as specifically authorized ~~in a given use district~~ under RMC 23.46.025(B) and to grant such permits when it finds that the requirements of this code specifically pertaining to such special uses are fully met. The board, in granting special use permits, may impose such additional conditions and restrictions as are necessary to make the proposed use compatible with the other uses permitted in the particular use district or in a neighboring district;

C. To hear, decide and grant or deny variances to the regulations or restrictions contained in this title when such variances are in harmony with the general purposes and intent of this title and are in accordance with general or specific rules contained in this title.

23.70.160 Decisions of the board of adjustment.

~~In exercising the above mentioned powers, the board of adjustment may, so long as such action is in conformity with the terms of this title, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the administrative official from whom the appeal is taken.~~

~~The concurring vote of a majority of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this title, or to effect any variation in the application of this title.~~

The board shall render a decision on all applications at a public meeting no later than 30 days after hearing of an application. The applicant shall be notified of the decision in writing.

23.70.170 Appeal from board of adjustment.

A. Appeals from variance decisions shall be made in accordance with RMC [19.70.060](#) (Judicial appeals).

B. Appeals from decisions on special use permits or on decisions regarding parking reduction for jointly shared parking facilities ~~and appeals from an administrative interpretation or decision~~ shall be made in accordance with Chapter [19.70](#) RMC (Closed Record Decisions and Appeals).

23.70.210 Public hearing and recommendation to council.

A. Reclassification. The planning commission hearing examiner shall conduct an open record public hearing as required by RMC Title [19](#) for a Type III permit application. ~~The recommendation to the city council of any reclassification or amendment hereto by the planning commission shall be by the affirmative vote of not less than a majority of the total members of the commission. The recommendation shall be by a recorded motion, which shall include incorporate the written findings of fact of the commission and the reasons for it's the hearing examiner's action; and the motion shall refer expressly to the maps, description and other matters intended by the commission hearing examiner to constitute the reclassification or amendment. The secretary of the planning commission shall prepare and sign an action summary of the commission's recommendation, which shall be forwarded to the city clerk for scheduling for city council consideration.~~

B. Amendment. The planning commission shall conduct an open record public hearing as required by RMC Title 19 for a Type IV permit application. The recommendation to the city council of any amendment hereto by the planning commission shall be by the affirmative vote of not less than a majority of the total members of the commission. The recommendation shall be by a recorded motion, which shall include the written findings of fact of the commission and the reasons for it's action; and the motion shall refer expressly to the maps, description and other matters intended by the commission to constitute the reclassification. The secretary of the planning commission shall prepare and sign an action summary of the commission's recommendation, which shall be forwarded to the city clerk for scheduling for city council consideration.

New Definitions

23.06.053 Amendment

"Amendment" means a change to the text of the City's zoning regulations.

23.06.797 Reclassification

"Reclassification" means an change in the City's zoning map, resulting in a change in zoning designation on one or more parcels of property. Also referred to as a rezone.

23.70.230 Consideration and action by council.

The ~~planning commission's~~ hearing examiner's recommendation on any reclassification or amendment, together with other reports, maps, documentation and recommendations, shall be considered by the city council in accordance with the provisions and requirements of RMC Title 19 (Development Regulation and Administration).

The planning commission's recommendation on any amendment, together with other reports, maps, documentation and recommendations, shall be considered by the city council in accordance with the provisions and requirements of RMC Title 19 (Development Regulation and Administration).

The council may, by ordinance, adopt or adopt with modification, any reclassification or amendment which the planning commission or hearing examiner has made a recommendation on; or by motion reject the reclassification or amendment.

The council may refer any request for reclassification or amendment back to the planning commission or hearing examiner for further review and recommendation. ~~In such case, no further public hearing before the planning commission hearing examiner shall be required.~~

Title 24

24.12.050 Preliminary plat – Public hearing, ~~physical planning commission~~ hearing examiner consideration and recommendation to city council.

A. The ~~physical planning commission~~ hearing examiner shall consider any the preliminary plat application at ~~their next available meeting~~ and shall conduct an open record public hearing in accordance with Chapter 19.60 RMC. After public hearing and review the ~~physical planning commission~~ hearing examiner shall determine whether the preliminary plat is in accordance with the comprehensive plan and other applicable code requirements and shall either make a recommendation for approval or disapproval to the city council. ~~or may table the application if they determine that additional information or design revisions are needed.~~

Recommendation for approval of the preliminary plat shall not be given by the ~~commission~~ hearing examiner without the prior review and approval of the city manager or his designee with respect to the engineering elements of said plat including the following:

1. Adequacy of proposed street, alley, right-of-way, easement, lighting, fire protection, drainage, and utility provisions;
2. Adequacy and accuracy of land survey data;
3. The submittal by the applicant of a plan for the construction of a system of street lights within the area proposed for platting, including a timetable for installation; provided, that in no event shall such a plan be approved that provides for the dedication of such a system of lighting to the city later than the occupancy of any of the dwellings within the subdivision.

B. The ~~planning commission~~ hearing examiner recommendation shall be forwarded to the city clerk for scheduling for city council consideration.

24.12.053 Preliminary plat – Required findings.

The ~~planning commission~~ hearing examiner shall not recommend approval of any preliminary plat application, unless the approval is accompanied by ~~it adopts~~ written findings that:

A. The preliminary plat conforms to the requirements of this title;

B. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, street or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

C. The public use and interest will be served by the platting of such subdivision and dedication; and

D. The application is consistent with the requirements of RMC [19.60.095](#).

24.12.055 Preliminary plat – City council consideration and action.

A. The city council shall consider the recommendation of the ~~physical planning commission~~ [hearing examiner](#) together with other recommendations, maps and documents and matters of record and render a decision on the preliminary plat consistent with the requirements of RMC Title [19](#) for Type III permit application.

B. The application for preliminary plat approval shall be approved, disapproved or returned to the applicant for modification or correction within 90 days of the date of acceptance.

C. City council approval of a preliminary plat shall not guarantee final approval of the plat or subdivision and shall not constitute an acceptance of the subdivision, but shall authorize the subdivider to proceed with the preparation of the final plat along the lines indicated in the preliminary plat.

D. Approval of the preliminary plat shall be operative for five years from the date of approval by the city council during which time a final plat or plats may be submitted.

E. The ~~planning commission~~ [subdivision administrator](#) may extend the approval period or may require that the preliminary plat must be resubmitted after the expiration of the approval period.

24.13.090 Appeal.

~~Appeal to the planning commission concerning interpretation or administration of this title may be taken by any person aggrieved. Such appeals shall be taken within 10 days from the date of the order, requirement, decision, or determination, by filing with the city engineer and the planning commission a notice of appeal specifying the grounds thereof. The planning commission may, so long as such action is in conformity with the terms of this title, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have powers of the city engineer.~~

A. Appeal to the Hearing Examiner. Any person or agency directly affected by any decision of an administrative official may appeal that decision to the hearing examiner under this chapter. Only final actions or decisions of an administrative official may be appealed under this title. Interim procedural or other rulings during or as part of a review or decision-making process by an administrative official under this title are not appealable except as part of the final decision or action.

B. Appeal. All appeals shall be filed within fourteen days following the mailing of the final decision by the administrative official. Appeals shall be filed with the development services division.

C. Appeals Shall Be in Writing. All appeals shall be in writing on forms provided by the development services division and shall be accompanied by the required fees. All appeals shall specifically cite the action being appealed, the error(s) or issue(s) to be considered, and explain why the action is not consistent with the provisions of the Richland Municipal Code or other provisions of law.

D. Notice. The development services division shall set a reasonable time and place for hearing of the appeal before the hearing examiner and shall notify all parties of record at least ten days prior to the hearing.

E. Action by the Hearing Examiner. The scope of the open record hearing on the appeal shall be limited to issues raised in the appeal application. The hearing examiner shall render a written decision on the appeal within ten working days from the conclusion of the hearing unless the appellant and the hearing examiner mutually agree to a longer period. The hearing examiner may affirm or reverse wholly or in part or modify the order, requirement, decision, or determination and to that end shall have all the powers of the officer from whom the appeal is taken. The development services division shall send copies of the hearing examiner's decision to the appellant and parties of record not later than three working days following the issuance of the final decision.

F. Effect of Decision. The hearing examiner's decision on the appeal shall be final and conclusive unless it is appealed to the city council by a person or agency affected by the decision in accordance with RMC Chapter 19.70.

24.14.060 Review procedures for large properties.

For properties containing 200,000 square feet or more in surface area, the following procedures shall apply:

A. Referral to Technical Advisory Committee and Other Involved Agencies. The administrator, within three working days of binding site plan application, shall transmit a copy of the binding site plan to each member of the technical advisory committee and to all other agencies required by this code. The transmittal of the binding site plan shall be under cover of a letter or memorandum scheduling a meeting of the technical advisory committee and shall stipulate the time and place of such meeting.

B. Written Response from the Technical Advisory Committee Member and Other Agencies Required. Written comments, recommendations, or requirements from the technical advisory committee members, or other involved agencies, shall be delivered to the administrator either prior to or at the technical advisory committee. Failure to provide such written response to the administrator shall constitute an assumption that the proposed binding site plan is acceptable to the department or agency not responding and, therefore, there is no need to comment.

C. Technical Advisory Committee Meeting. The technical advisory committee meeting shall convene at the stipulated time and place, and shall be attended by regular committee members, other involved agencies, and the applicant and/or applicant's representatives. The administrator shall serve as moderator of the meeting and shall prepare a written report summarizing the recommendations of the committee.

D. Public Hearing Notice Requirements. The administrator, upon receipt of a binding site plan application, shall schedule a public hearing before the ~~physical planning commission at the commission's next regular meeting~~ hearing examiner. Notice of such hearing shall be given in accordance with the following requirements:

1. Notice shall be published in the official newspaper of the city, not less than 10 calendar days prior to the date of public hearing before the ~~commission~~ hearing examiner;
2. Written notice shall be mailed to owners of record of property within 300 feet of property involved, exclusive of public rights-of-way, at least 10 calendar days prior to the public hearing before the ~~commission~~ hearing examiner; and
3. All hearing notices shall include a legal description of the location of the proposed binding site plan and either a vicinity sketch or a location description in nonlegal language or both.

E. Referral to ~~Physical Planning Commission~~ Hearing Examiner. The administrator shall forward the binding site plan to the ~~physical planning commission~~ hearing examiner at least five days prior to the ~~commission meeting at which the public hearing has been scheduled~~. The following information shall be forwarded along with the binding site plan:

1. A copy of the notice of public hearing;
2. A copy of the preliminary binding site plan letter including attachments;
3. A copy of the technical advisory committee summary report; and
4. A report of the administrator's analysis, findings, and recommendation.

~~F. Physical Planning Commission~~ Hearing Examiner Public Hearing, Consideration, Findings, and Action. The ~~physical planning commission~~ hearing examiner shall conduct the public hearing on the binding site plan at the scheduled time and shall afford a reasonable opportunity for testimony both for and against the application to be heard. In addition to the testimony received, the ~~commission~~ hearing examiner shall consider all written and oral information made available and shall determine if the binding site plan makes adequate provision for the public health, safety, and welfare, and will be in the best interest of the citizens of the city and in accordance with the design criteria of this code.

After due consideration of all testimony, information, and criteria, the ~~commission~~ hearing examiner shall adopt such findings as it deems appropriate and, on the basis of such findings, shall approve, approve with modifications, or deny the application for binding site plan.

~~The physical planning commission may act to table an application for binding site plan approval to afford additional time for resolution of problems, concerns, or issues which cannot be resolved at the commission meeting. The commission may table an application with or without the consent of the applicant until the next regular meeting following the public hearing. However, the commission examiner may table an application for longer periods of time with the applicant's consent.~~

Upon approval, the applicant shall record the binding site plan with Benton County.

24.14.070 Review procedures for small properties.

For properties containing less than 200,000 square feet in surface area, the following procedures shall apply:

A. Referral to City Departments and Divisions. Within three working days of the filing of a binding site plan application, the administrator shall transmit a copy of the binding site plan to the water and waste utilities subdepartment, electrical engineering, planning, engineering, building safety and inspection divisions, and the fire and emergency services department. The transmittal of the binding site plan shall be under cover of a memorandum scheduling a meeting of the affected departments and divisions within 10 working days following the filing of a binding site plan application and shall stipulate the time and place of such meeting.

B. Written Response from Affected Departments. Written comments and recommendations or requirements from affected departments shall be delivered to the administrator either prior to or at the binding site plan meeting. Failure to provide such written response shall constitute an assumption that the binding site plan is acceptable to the department not responding and, therefore, there is no need to comment.

C. Binding Site Plan Meeting. The binding site plan meeting shall convene at the stipulated time and place and shall be attended by affected departments and the applicant and/or representatives of the applicant. The administrator shall serve as moderator of the meeting and shall prepare a written report summarizing the recommendations of the meeting. A copy of the summary report shall be forwarded to each affected department and to the applicant or representative of the applicant no later than three working days from the date of the binding site plan meeting.

D. Consideration and Action by the Administrator. The administrator, within a period of three working days from the date of the binding site plan meeting, shall consider all information provided and determine if the application for binding site plan makes adequate provisions for the public health, safety, and welfare, and will be in the best interest of the citizens of the city and in accordance with the design criteria of this code. After due consideration of the above, the administrator shall approve, approve with modifications, deny, or return the binding site plan application to the applicant.

The administrator may return the application for binding site plan to the applicant without taking action on it when additional information or modifications are required. After an application is resubmitted, the administrator may refer the application to affected city departments and divisions and schedule a second binding site plan meeting according to the procedure previously set forth for referral and meeting, or the administrator may take action on the binding site plan application resubmittal. The administrator shall act to approve, conditionally approve, or deny the application for the binding site plan; however, the administrator may, with the applicant's consent, return the binding site plan to the applicant without taking action on it.

Upon approval, the applicant shall record the binding site plan with Benton County.

E. Appeal. Any action by the administrator may be appealed to the ~~physical planning commission~~ hearing examiner in accordance with the requirements set forth in RMC Title 19 for Type I permit application.

24.14.100 Appeals.

Any action taken by the ~~physical planning commission~~ hearing examiner on a binding site plan application may be appealed to the city council in accordance with the requirements set forth in RMC Title 19 for a Type II permit application.

24.24.040 Deviations – Requirements.

In specific cases, the ~~commission~~ hearing examiner may authorize deviations from the provisions or requirements of this title that will not be contrary to public interest; but only where, owing to special conditions pertaining to a specific subdivision, the literal interpretation and strict application of the provisions or requirements of this title would cause undue and unnecessary hardship. No such deviation from the provisions or requirements of this title shall be authorized by the ~~commission~~ hearing examiner unless the ~~commission~~ shall find that all of the following facts and conditions exist and until:

- A. ~~Exceptional or extraordinary circumstances or conditions applying to the subject subdivision or to the intended use of any portion thereof that does not apply generally to other properties in similar subdivisions or in the vicinity of the subject subdivision.~~
- B. ~~Such deviation is necessary for the preservation and enjoyment of a substantial property right of the subdivider or is necessary for the reasonable and acceptable development of the property.~~
- C. ~~The authorization of such deviation will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the subdivision is located.~~
- D. ~~The authorization of such deviation will not adversely affect the comprehensive plan of the city.~~
- E. ~~Deviations with respect to those matters originally requiring the approval of the city engineer may be granted by the commission only with the written approval of the city engineer.~~

(A) A written application for a deviation from subdivision standards, accompanied by an application fee as specified by the adopted fee schedule is submitted demonstrating all of the following:

(1) That special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands in the same area;

(2) That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same area or is necessary for the reasonable and acceptable development of the property;

(3) That the special conditions and circumstances do not result from the actions of the applicant;

(4) That granting the deviation requested will not confer on the applicant any special privilege that is denied by this title to other lands in the same area;

(5) That the deviation will not nullify the intent and purpose of the comprehensive plan or this title.

(6) Deviations with respect to those matters requiring the approval of the city engineer may be granted by the hearing examiner only with the written recommendation of the city engineer.

(B) The hearing examiner shall hold an open record hearing to consider the deviation application concurrently with the subdivision application.

24.24.050 Deviations – Conditions.

In authorizing a deviation, the ~~commission~~ *hearing examiner* may attach thereto such conditions regarding the features of the deviation as it may deem necessary to carry out the spirit and purposes of this title and in the public interest.

24.24.055 Amendments.

At any time after preliminary plat approval and before final plat approval, the applicant may submit an application to the subdivision administrator that proposes an amendment to the approved or conditionally approved preliminary plat.

A. Minor Amendments. The subdivision administrator shall have the authority to administratively approve amendments that the subdivision administrator deems to be minor.

B. Major Amendments. A major amendment shall include, but is not limited to, the following:

1. Any amendment that would result in or would have the effect of decreasing the aggregate area of open space in the subdivision by 10 percent or more;
2. Any amendment that would result in increasing the number of lots in the subdivision beyond the number previously approved;
3. Any amendment that would result in the relocation of any roadway access point to an exterior street from the plat;
4. Any amendment that proposes phasing of plat development when no phasing plan was included in the original preliminary plat approval; or
5. Any amendment that, in the opinion of the subdivision administrator, would significantly increase any adverse impacts or undesirable effects of the plat.

C. Process for Major Amendments. If the subdivision administrator determines that the proposed amendment is major, the ~~planning commission~~ *hearing examiner* shall hold a public hearing on the proposed major amendment in accordance with the requirements for preliminary plat approval found within this title; provided, however, that any public hearing on a proposed major amendment shall be limited to whether the proposed major amendment should or should not be approved. Within 30 days following receipt of the ~~planning commission's~~ *hearing examiner's* written recommendation, the city council shall approve or disapprove any proposed major amendment and may make any modifications in the terms and conditions of the preliminary plat approval to the extent that they are reasonably related to the proposed amendment. If the applicant is unwilling to accept the proposed major amendment under the terms and conditions specified by the city council, the applicant may withdraw the proposed major amendment and develop the subdivision in accordance with the original preliminary plat approval (as it may have been previously amended).

Title 26

26.50.10 Permit requirements.

- A. Substantial developments proposed on shorelines of Richland shall be allowed subject to the issuance of a permit from the City of Richland. Applications for Substantial Development Permit, Special Use Permit, and Variance shall be required to comply with the permit review provisions established by the State of Washington (Chapter 173-27 WAC) and the City of Richland and shall be accompanied by a standard fee as set forth in the schedule of fees in RMC 19.80. Application forms containing the information required by WAC 173-27-180 shall be provided by the Shoreline Administrator.
- B. Shoreline permits shall be classified Type I or Type II permit applications according to the criteria established in RMC 19.20.010.
 - 1. Decision authority for Shoreline Substantial Development Permits meeting the criteria for Type I permit applications shall rest with the Administrator.
 - 2. Decision authority for Shoreline Substantial Development Permits classified as Type II permit applications and all Special Use Permits shall rest with the ~~Planning Commission~~ hearing examiner.
 - 3. Decision authority for shoreline Variances shall rest with the ~~Planning Commission~~ hearing examiner.
- C. Application for a Substantial Development Permit or Special Use Permit shall be considered a request for Site Plan Approval as outlined in RMC 23.48.

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Changing to a Hearing Examiner System For The City of Richland: A Review and Recommendation for How to Do it Right

August 5, 2014

James A. Wise, Ph.D. Planning Commissioner, City of Richland

Background on “Hearing Examiners”

The origin of “Hearing Examiners” appears to date back to the 1920s and ‘30s in the Eastern United States, where there was concern for corruption influencing land use decisions in what was then called a ‘Board of Zoning Adjustment’.

This type of concern resurfaced in the post ‘New Deal’ era and influenced the national Administrative Procedure Act of 1946, which aimed at curbing the unbridled authority of local officials. The extension of ‘Hearing Examiners’ again came into greater prominence after passage of national social and environmental legislation in the 1960s and 70s, when implementation often met local community resistance.

Today, there are nine States (by our best count) that have passed implementation legislation authorizing Hearing Examiners in local land use decisions. These are Maryland, Illinois, Idaho, Indiana, Arizona, Tennessee, Alaska, Oregon and Washington (W.R.C.A. 35A.63.170). *So on the State level, this type of system is still in the minority.*

In the State of Washington, the use of Hearing Examiners has been more strongly promoted since adoption of the 1990 Growth Management Act (Chapter 36.70A RCW). The WCIA (Washington Cities Insurance Authority) has been the group lobbying most strongly for adoption of Hearing Examiners. This suggests why most arguments for Hearing Examiners have centered on the topic of “Risk Management”.

Arguments for and Against the ‘Hearing Examiner’ System

For

The center of the argument for adopting a Hearing Examiner system is to reduce the risk of improperly made land use decisions that can open a city to subsequent litigation. A Hearing Examiner, by virtue of their position, has the proper training for such decisions, is objective, neutral, consistent, and accountable. (S)he creates a written record, can be more efficient (because there is no quorum required) and offers the potential for cost reduction if subsequent decision making by City Council or appeals are avoided. Note that in WA State, the Municipal Research and Services Center of Washington emphasizes, “There are no state statutes that establish the minimum qualifications of Hearing Examiners.” And “a thorough knowledge of legal procedures, relevant ordinances and case law” is beneficial”, but “a law degree is not

required". This would seem to suggest that the best possible person could be selected for a particular community Hearing Examiner, without onerous qualifications.

Having a Hearing Examiner also separates quasi-judicial functions from policy making and advisory functions of local groups like Planning Commissions and City Councils, which are otherwise involved in land use decision-making.

Some major organizations have endorsed the Hearing Examiner Concept, including the American Law Institute, the American Bar Association Advisory Commission on Housing and Urban Growth, and the American Planning Association.

Finally, in their presentations to WA City Councils on behalf of the Hearing Examiner system, members of the above associations appear to emphasize that decisions made by Hearing Examiners are less likely to be overturned on appeal than those made by City Councils or Planning Commissions.

Against

Arguments against use of a Hearing Examiner come from a wider variety of sources, and range from the practical to the philosophical. The major ones are:

- Cost to the City almost always increases dramatically due to hiring someone with the needed expertise, and the necessary support staff for enhanced record keeping.
- There is an increased cost to the parties involved, applicants and stakeholders, due to a more formal decision making procedure.
- Efficiency gains are not realized due to City staff having to adapt to the schedule of a Hearing Examiner who may be working on a less than full time basis.
- Loss of accountability to voters, who elected officials to make decisions and then now find these decisions sidestepped and made by a 'hired legal gun'.
- Focus of the Land Use decision-making process becomes solely on procedural goodness at the expense of substantive goodness.
- *Most notably*, loss of citizen participation in the decision making process because the increased formality and costs deter citizen involvement and focus exchanges between lawyers.
- A public shift to opposition focused on requirements of SEPA and the GMA.

Assessment of a Hearing Examiner for the City of Richland

The history of the use of Hearing Examiners in WA State is a mixed one. They can be successfully employed and show advantages argued by their promoters. They can also be the source of lingering, bitter legal and political community battles.

What does the evidence show?

One style or type of Hearing Examiner does not fit all.

The enabling legislation in WA State lays out *what a Hearing Examiner can do, not what one should do*. The scope of duties, the exact procedures, the timing, fees, appeals process etc is all specified by the enabling City Code Amendments. These deserve a great deal of scrutiny and preparation to have them fit the local community if a Hearing Examiner system *for it* is to be accepted and successful.

This type of review has not yet been done for the City of Richland. We on the Planning Commission have not had the chance to examine alternative enabling codes and see the full scale of what's possible in order to ensure that the one brought to us for review on July 9, 2014 is the best one for the City. We do not know enough about what is possible in something as important as this to ensure that the proposed code amendments for the City of Richland are the proper ones, although we continue to have plenty of questions about them.

Adoption of a Hearing Examiner does not deter litigation. It changes it.

In Eastern Washington, two cases illustrate the critical essence of how litigation, or the threat of litigation, changes under a Hearing Examiner system.

Shift from Substantive to Procedural Review

In a case in Spokane County (*Scofield v. Spokane County*) a Hearing Examiner approved a developer's preliminary plat. This was overturned by the Planning Commission Board on the basis that the Examiner's decision had "incorrectly interpreted and applied the comprehensive plan" and that "substantial evidence did not support the Examiner's decision", which had "used the wrong criteria". The developer appealed the overturn of the Hearing Examiner to Superior Court.

The Court sided with the Board in overturning the Hearing Examiner's original decision, using analysis under the WA State Land Use Petition Act (known as the LUPA act). This analysis was **entirely procedural** under standards set forth in (a) through (f) subsections of the Act. In other words, was the Planning Commission Board's reversal of the Hearing Examiner 'done rightly'? This restriction to procedural assessment in prior Land Use decisions *is all* the Superior Court can assess under the LUPA law. There was no assessment of "was the right thing" (substantive goodness) done in the Board's reversal of the Hearing Examiner.

Now, a Hearing Examiner is also bound to procedural goodness because their job is to strictly and fairly apply the City's ordinances and Comprehensive Plan. Any substantive goodness is regarded as laying in the ordinances and Comprehensive Plan as written.

In the Spokane case, the Planning Commission Board had a different idea of what criteria the Plan said should and could be applied to the decision than the Hearing Examiner did. In other words, the substantive goodness was apparently unclear, and the Board provided a check on this in the land use decision-making process.

But what will happen if a Hearing Examiner system is adopted as proposed in the Code Amendments sent to the RL Planning Commission workshop on July 9, 2014? In that proposal, Type I and II Land Use decisions are made by the Hearing Examiner and sent directly to Superior Court for review. These Types cover 21 different kinds of permits, including Site Plan approvals, Large Binding site plans, Design Review-acceptance of alternative design standards, Building Height exceptions, and Special Use Permits, among others. In all of these, *there would be no review or appeal on substantive goodness grounds whatsoever!* It's all procedural review. There is no chance to ask, "Is this **right** for the City of Richland?" Citizen's values, City values, and preferences are left out of the process, entirely. This is a recipe for establishing entrenched resentment and displaced 'acting out' by our citizenry. And it is due to a shift to a system that would take the thoughtful and considerate review of 'substantive goodness' entirely out of these important types of permits.

Opening 'Opportunistic' Lawsuits

In May of 2014, a statewide environmental advocacy group, "Futurewise", appealed the extension of the City of Kennewick's urban growth area for industrial development on the basis that it violated the WA State Growth Management Act.

Appeals like this, lodged by outside groups, are a harbinger of 'things to come', under pure procedural review processes such as a Hearing Examiner System (now existing in Kennewick) sets up.

A web review of ongoing or threatened litigation against municipalities because of decisions by Hearing Examiners reveals that all of them are based on purported violations of SEPA (State Environmental Policy Act), CMA (Growth Management Act) or other Urban Growth State laws. This is because the disjunction between 'policy', expressed by a Comprehensive Plan, and 'implementation', expressed by a permitting process, leaves room for alternative interpretations, which can be challenged. And the enabling State legislation contains penalties and reimbursement of legal fees for instances that are successfully challenged. This creates a monetary incentive for groups anywhere to find even the smallest procedural grounds to challenge Hearing Examiner decisions. And for local citizen's groups, it creates the only avenue of dissent left to them. The result: People no longer show up for hearings, but their attorneys show up there, and for court.

This implies that the shift to a Hearing Examiner System should best occur when three preliminary conditions are fulfilled:

- There exists a strong, positive public involvement process outside the Hearing Examiner session and appeal itself.
- The extant City Codes have been 'scrubbed' to remove contradictions and discrepancies so that occasions for errors by Hearing Examiners are minimized.

- The Comprehensive Plan is thoroughly reviewed and updated with a highly inclusive public involvement process so that the values and intentions of the community are clearly captured and espoused, and their implementation in the permitting process is clear and logical.

Add to these a fourth,

- That there actually be enough new business items needing Hearings now to justify the additional cost of a Hearing Examiner.

It is very questionable if the City of Richland meets any of these preconditions.

Additionally, the intention seems to be to use the Planning Commission's release time from Hearings to evaluate City Codes to find sources of potential problems, *at the same time* that a newly appointed Hearings Examiner is attempting to apply the City Codes in their decision-making.

I believe these circumstances create a high likelihood of dissatisfaction and failure in moving to a Hearing Examiner the way it is currently proposed.

An Alternative Proposal to a Hearing Examiner for the City of Richland

If the City really wishes to move towards a Hearing Examiner system, then here is a less risky path for it to follow:

- Hire a Hearing Examiner on a trial basis, for a year, after the Planning Commission and City Council and stakeholder groups have had significant time and proper opportunity to thoroughly review and evaluate enabling Code amendments for the functioning of the position. This would include sending out review drafts to citizens groups who have most often appeared to give testimony at prior Planning Commission Hearings.
- Give the Planning Commission (at least temporarily) either preliminary review of applications going to the Hearing Examiner (similar to Seattle) or preliminary appeal of challenged decisions made by the Hearing Examiner. The PC's role would be to send a recommendation on to the Examiner or to City Council for an appeal decision. The cost of both would be the same as an appeal to City Council now. This allows us to catch any discrepancy errors made by a new Hearing Examiner in a way that does not expose the City to the cost of errors caught by a Superior Court. It also immediately points us to places where the City Codes need revision or clarification.
- Use the year trial basis to review codes, particularly where Hearing Examiner deliberation is difficult, regardless of any appeals.
- Use the year to set up alternative means for organized citizens groups to work with the City departments in a proactive way outside of any Hearings process. This ensures they will not have to revert only to appeals of the Hearing Examiner in order to make their positions and preferences known.

I believe this alternative proposal produces a better and safer path for the City to move to a Hearing Examiner System, and I offer it for the City's consideration.

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Note: Every effort has been made to ensure that there are no inaccuracies in citing or interpretation of sources. If errors exist, please bring them to my attention so that they can be speedily corrected.