



Agenda

RICHLAND PLANNING COMMISSION MEETING NO. 8-2014

Richland City Hall - 505 Swift Boulevard - Council Chamber

WEDNESDAY, August 27, 2014

7:00 p.m.

COMMISSION MEMBERS: James Utz, 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

Regular Meeting, 7:00 p.m.

Welcome and Roll Call

Approval of the Agenda

Approval of July 23, 2014 Meeting Minutes

Public Comments

Public Hearing Explanation

New Business – Public Hearings

1. APPLICANT: BRIAN & CATHY KEELE (Z2014-102)*

Request: APPROVAL OF A ZONE CHANGE OF APPROXIMATELY 1.4 ACRES FROM C-1 NEIGHBORHOOD RETAIL TO C-3 GENERAL BUSINESS.

Location: AT THE SOUTHEAST CORNER OF QUEENSGATE DRIVE AND JERICHO ROAD.

2. APPLICANT: CITY OF RICHLAND (Z2014-105)

Request: ZONING TEXT AMENDMENTS – ADDITION OF A NEW RMC SECTION 23.08.100 - BANNING MARIJUANA USES

Location: CITYWIDE

3. APPLICANT: CITY OF RICHLAND (Z2014-106)

Request: ZONING, SUBDIVISION & SHORELINE TEXT AMENDMENTS IMPLEMENTING A HEARING EXAMINER SYSTEM

Location: CITYWIDE

***Quasi-Judicial Hearing**

Communications

Commission/Staff/Liaison Comments

Adjournment of Regular Meeting

Planning Commission Workshop Meeting, Wednesday, September 10, 2014

Planning Commission Regular Meeting – Wednesday, September 24, 2014

THIS MEETING IS BROADCAST LIVE ON CITYVIEW CHANNEL 192 AND ON WWW.CIRICHLAND.WA.US/CITYVIEW

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MEMORANDUM

*Community and Development Department
Planning & Development Services Division*

TO: PLANNING COMMISSION

FROM: RICK SIMON, DEVELOPMENT SERVICES MANAGER

DATE: AUGUST 27, 2014

RE: AUGUST REGULAR MEETING

Following the conclusion of the regular meeting this month, Dr. Larry White would like to address the Commission concerning the Badger Mountain South master plan. Dr. White represents Nor Am, Inc. the owner of Badger Mt. South and he would like to provide some explanation as to why Nor Am will be proposing some changes to the Land Use and Development Regulations for Badger Mt. South. This subject will be a topic of discussion at your September workshop but unfortunately, Dr. White is not able to attend the workshop; hence the request to address the Commission following the regular meeting.

Attached, please see the letter from Mike Wallace, an attorney who performs work for the Washington Cities Insurance Authority. Mr. Wallace provided this letter to City Council advocating the use of a hearing examiner system. Since the agenda includes code amendments for the implementation of a hearing examiner system, this letter is provided for Commission review.

JOHN L. McCORMACK
MARK R. BUCKLIN
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
JAYNE L. FREEMAN
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AMANDA G. BUTLER
BRIAN C. AUGENTHALER

ROBERT C. KEATING (1915-2001)

August 15, 2014

Heather D. Kintzley
City Attorney
City of Richland
975 George Washington Way
Richland, WA 99352-3548

RE: Use of a Hearing Examiner for Land Use Decision-Making

Dear Ms. Kintzley:

It is my understanding that in a recent land use audit of all member cities conducted by Washington Cities Insurance Authority ("WCIA"), the use of a hearing examiner for land use decision-making came up, and that the City of Richland may be considering adoption of a hearing examiner system for land use decision-making. In this regard, WCIA suggested I write regarding my opinions and experiences on the use of a hearing examiner for land use decision-making. Accordingly, I am providing this letter to you, which you are encouraged to forward to the City Manager, Mayor, City Council and staff, providing my strong recommendation for the use of a hearing examiner for land use decision-making.

As I explain in this letter, I believe the use of a land use hearing examiner to make final quasi-judicial decisions on land use permits (as well as for deciding administrative appeals) is invaluable and should be utilized to the fullest extent by the City of Richland. It is the trend of most local governments to use a land use hearing examiner to adjudicate quasi-judicial and administrative land use permitting.

By way of background, I am a partner and director at Keating, Bucklin & McCormack, Inc., P.S., a law firm emphasizing representation of local government in a wide variety of municipal matters, civil lawsuits and administrative and other legal claims. For over 25 years, my practice has emphasized a broad range of municipal, land use, regulatory, environmental, civil rights and tort-related issues in defense of government entities, elected officials and their employees. I represent cities, special purpose districts and other government entities in land use, permitting, environmental matters, civil rights and other claims, and have written numerous

articles on land use law, municipal and local government legislation and regulation, permitting and environmental issues, as well as risk management on various topics of interest to local government and land use agencies. As part of my practice, I also provide municipal, land use, environmental and risk management training to elected officials and government agencies throughout the State. A significant part of my practice involves defending land use claims arising out of quasi-judicial land use decisions, made by citizen and elected bodies as well as professional hearing examiners.¹ A copy of my professional resume is attached. You can also get more information on my law firm and my land use practice through our website at www.kbmlawyers.com.

I provide the foregoing summary of my background as context for my strong, unqualified, recommendation to all cities, towns and local government entities in the use of a hearing examiner to adjudicate quasi-judicial land use matters. Being “in the trenches,” as it were defending land use decisions – and frequently land use mistakes – by local government has given me first-hand experience in seeing the procedural, timeliness and significant liability risk differences in land use decisions made by planning commissions, boards of adjustment and city councils versus those decisions made by professional hearing examiners. This first-hand experience in defending literally thousands of these decisions over the past 25 years has made one thing crystal clear: there is no substitute for local government’s use of a professional hearing examiner in deciding quasi-judicial land use matters. For this reason, I write to encourage the City of Richland – as I do with all of the local government entities I work with or speak to – to take full advantage of a professional land use hearing examiner.

General Authority of Hearing Examiners

I recommend to cities I work for to utilize, to the fullest extent possible, a hearing examiner to (1) make final decisions on all quasi-judicial land use permits and decisions, and (2) to act as the administrative appeal body for review of routine administrative/ministerial permits (such as right-of-way permits, clearing and grading permits, tree cutting permits, building permits, etc.) and of administrative/code interpretations. The adoption of a hearing examiner position is expressly authorized in RCW 35A.63.170. A hearing examiner may hear:

- (a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
- (b) Appeals of administrative decisions or determinations; and
- (c) Appeals of administrative decisions or determinations pursuant to RCW ch. 43.21C.

¹ I am not a hearing examiner, and do not derive any income as a hearing examiner.

RCW 35A.63.170(1)(a)-(c).² These are identical to the duties a board of adjustment would otherwise perform. *Compare* RCW 35A.63.110(1)-(4). The City must explain the nature and scope of the hearing examiner's duties if the position is created. *See* RCW 35A.63.170.

The Legislature has also authorized local government to establish the procedures to be followed by the hearing examiner.

(2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

- (a) The decision may be given the effect of a recommendation to the legislative body;
- (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or
- (c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

RCW 35A.63.170(2).

Thus, as an alternative to using a planning commission or city council to decide quasi-judicial land use applications and permits, the council has express statutory authority³ to adopt a hearing examiner system and vest in a hearing examiner with broad authority to conduct open record hearings on and decide applications for virtually all types of permits and land use approvals, including such things as site plans, full and short plats, conditional or special use permits, variances, reasonable use exemptions and waivers, shoreline permits, "or any other class of applications for or pertaining to development of land or land use." A hearing examiner can also be vested with authority to hear appeals of administrative or quasi-judicial permit decisions as well as appeals of determinations under SEPA. Hearing examiners also have other authorities set forth in RCW 35.63.130 and RCW 35A.63.170.

² The scope of authority of hearing examiners is best described in the case of *Chausee v. Snohomish County Council*, 38 Wn. App. 630, 689 P.2d 1084 (1984). In that case, the court described hearing examiners as "creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Id.*, at 38 Wn. App. 636.

³ In any case, the city council must specifically adopt a hearing examiner system and through an ordinance or code amendment vest the hearing examiner with authority to hear and decide the specific types of land use applications or permits, or other administrative decisions, that he or she can make.

There are only two instances in which the State Legislature has mandated that legislative bodies (city councils) make decisions on land use permits and approvals: (1) decisions on final plats (subdivisions) (*see*, RCW 58.17.100); and (2) area-wide/general applicability zoning decisions/rezones. (RCW 35.63.130(1), RCW 35.63.130(2)(c), RCW 36.70.870(2)(c), and RCW 36.70.970(1). Aside from these two limited instances, hearing examiners can hear and decide virtually all other land use permits, approvals or appeals, as long as the city code expressly authorizes an examiner to hear those matters.

The Advantages of Using a Hearing Examiner for Land Use Decision-Making

The following are some of the many advantages and benefits to using a hearing examiner for quasi-judicial land use decision-making and administrative appeals of permit decisions:

- Avoids political influence or pressure (which is forbidden in quasi-judicial decision-making);
- They are professional, specially trained individuals;
- They have experience with many different jurisdictions and regulations and can carry that experience and knowledge over to your jurisdiction, helping to improve your land use code and process;
- They are technically adept, and have knowledge of physical land development and technical feasibility of land development and permitting;
- A hearing examiner is more cost effective (reduces appeals and judicial challenges);
- Allows for a more efficient process (faster decisions, fewer mistakes and far fewer appeals);
- Substantial reduction in judicial (court) reversal of decisions;
- Substantial reduction in potential damages claims against the city (I can attest to this, and most municipal attorneys and land use professionals would agree);
- Eliminates the risk of lawsuits and legal claims against citizen-decision makers – like Planning Commission and City Council members – personally;
- Instills public confidence in the decision-making process;
- Helps ensure constitutional protection of due process of law and equal protection;
- Helps ensure predictability and consistency in the process and decision-making;
- Hearing examiners are skilled in understanding, interpreting and applying nuances of your municipal code, state and federal laws, and general legal principles;

- Use of a hearing examiner helps satisfy State law requirements for streamlining the regulatory process and administrative review and appeals (1995 Regulatory Reform Act, RCW Chapter 36.70B);
- Use of a hearing examiner segregates and clearly delineates quasi-judicial decision making functions from legislative (law-making) and long-term planning functions (which are the functions of planning commissions and city councils);
- Provides the opportunity for feedback and correction of code ambiguities and conflicts;
- Use of a hearing examiner frees up city council and planning commission time for other, important planning, goal setting and law-making functions; and,
- Provides good customer service.

The following is a quote from a state Supreme Court justice endorsing Pierce County's rationale for creating a hearing examiner position:

A. The need to separate the County's land use regulatory function from its land use planning function;

B. The need to ensure and expand the principles of fairness and due process in public hearings; and

C. The need to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters; it is the purpose of this chapter to provide an administrative land use regulatory system which will best satisfy these needs.

* * *

[A] land use hearing examiner system will be very beneficial to all concerned or involved with land use decisions, and said system will (1) provide a more efficient and effective land use decision procedure; (2) provide the Planning Commission more time to devote towards studying and recommending land use policy changes to the Board; (3) provide an experienced expert to hear and decide land use cases based upon policy adopted by the Board; and (4) provide the Board of County Commissioners more time to spend on other County concerns by relieving them from hearing land use cases, except any appeals ... [.]

Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 51, 873 P.2d 498 (1994) (Madsen, J., dissenting) (citing Pierce County Resolution 20489 (1978)) (emphasis added).

Risks and Pitfalls in *Not* Using a Hearing Examiner for Land Use Decision-Making

Based on the broad authority of hearing examiners to adjudicate a wide range of land use permits, decisions and appeals, the significant reduction in land use lawsuit liability exposure by using a hearing examiner, and my experience defending both planning commission/city council/board of adjustment land use decisions versus those made by hearing examiners, there is, in my experience and opinion, no good reason to not use a hearing examiner for land use decision-making.

The few reasons offered *against* the use of a hearing examiner (and, by implication for retention of elected official or citizen body land use decision-making) are neither justified nor legally supportable. One such claim is that use of a hearing examiner system is too costly, or the jurisdiction can't afford to use a hearing examiner. My first response to this claim is that local governments can't afford *not* to use a hearing examiner for land use decision-making. Please refer to the many advantages discussed above. Second, in my experience the costs of using a hearing examiner are minimal, and, in many cases, can be passed on to permit applicants or land use appellants, either directly or included as part of carefully crafted permit or administrative fees associated with land use permits or appeals heard by hearing examiners. Additionally, many jurisdictions share in the cost of a hearing examiner or pay into a "pool" to use a hearing examiner who essentially "rides the circuit" between several geographically close jurisdictions. If the potential cost of using a hearing examiner is of concern to the City of Richland, I urge you to talk to other jurisdictions – including Pasco and Kennewick, your neighbors – to learn about how they handle costs and their experiences.

A second reason sometimes offered *against* the use of a hearing examiner is the lack of representative control over constituent demands for land use policy-making. Regarding this claimed loss of "citizen control" over the land use permitting process, this is actually a key reason that a hearing examiner *should* be used. Land use planning and policy decisions are made by the elected officials (city or town councils) through comprehensive planning and comprehensive plan updates, long range strategic planning, area-wide zoning and development regulations, and adoption of other area-wide development criteria. As noted above, land use planning should be reserved to and used by both planning commissions and city or town councils.

However, that is not the case with site- or property-specific land use permits or land use actions. Property- or site-specific land use approvals and decision-making should not be done based on citizen comment, policy criteria, planning criteria or constituent desires. Such permitting and decision-making decisions – whether at the administrative or quasi-judicial level – should be entirely, 100% free of citizen control and politics. For this reason, use of a

professional hearing examiner to make decisions on such site-specific or permit-specific land use applications is the best, safest and most appropriate method of decision-making.

In short, planning commissions and city councils, should not be involved in making final decisions on quasi-judicial land use permits; nor should they hear appeals of permit decisions or code interpretations. Rather, such decisions should be delegated to a professional hearing examiner. As State law makes clear, planning commissions and city councils have far more important tasks to do with their limited time: responding to their citizen constituencies; crafting, reviewing and amending comprehensive plans; crafting, reviewing, amending and updating zoning ordinances; crafting and updating shoreline plans; doing long range land use planning; doing utility and infrastructure planning; budgeting; contracting; completing ongoing and time-sensitive planning and regulatory obligations; and handling the many day-to-day affairs of local government.

A third reason sometimes given to not use a hearing examiner is that the local jurisdiction wants to be independent, retain its autonomy, and not be “pressured” to use one just because other jurisdictions do. Yet, neither the State nor any other jurisdiction can dictate the use of a hearing examiner. But it is noteworthy – and significant – that (a) the overwhelming majority of cities, towns, counties and other land use permitting jurisdictions use hearing examiners for land use decision-making, (b) virtually all land use and government attorneys agree on the use of hearing examiners, and (c) virtually all planning professionals agree that the use of a hearing examiner for land use decision making is not only good risk management, it is more efficient, more cost effective, instills public confidence in the process, avoids arbitrary and capricious decision-making, and limits improper political influence.

Fourth, I have heard one hearing examiner opponent claim “there is no evidence that supports such a proposition [that decisions made by a hearing examiner will hold up better in court].” Even a cursory review of trial court filings and appellate court decisions will readily confirm that not only are there far fewer judicial challenges to land use decisions made by hearing examiners, those few legal challenges that are made to examiner decisions are far more frequently upheld by the appellate courts than are decisions made by elected officials or citizen groups or bodies.

Indeed, the most egregious land use decisions in this State and in the federal courts arise from elected official or citizen-body decision-making on land use permits and applications – not hearing examiner decisions. For a sampling of such decisions, see: *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998) (a good case to review; Supreme Court chastises the Spokane City Council for arbitrarily denying a grading permit for a contentious development project, and imposes sanctions and attorney fees on individual council members; numerous other bad land use decisions arising from city council or planning commission actions – but no hearing examiner case – referenced); *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997); *Hayes v. City of Seattle*, 131 Wn.2d 706, 934 P.2d 1179 (1997); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992); *West Main Assoc., Inc. v. City of Bellevue*, 106 Wn.2d 47, 720

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P.2d 782 (1986); *Pleas v. City of Seattle*, 112 Wn.2d 794, 744 P.2d 1158 (1989); *King v. City of Seattle*, 84 Wn.2d 239, 525 P.2d 228 (1974); *Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988); *Westmark v. City of Burien*, 140 Wn. App. 540, 166 P.3d 813 (2007); *Saben v. Skagit County*, 136 Wn. App. 869, 152 P.3d 1034 (2006); *Cox v. City of Lynnwood*, 72 Wn. App. 1, 863 P.2d 578 (1993); *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2 744 (1993).

Finally, I have also heard the comment that “hearing examiners tend to favor development interests more than local citizen bodies such as planning commissions.” There is no evidence to support this; in fact, it is contrary to my experience and the decisions of hearing examiners in the communities I do work for.

Conclusion and Summary

In summary, I urge the City of Richland to consider modifying its land use code to eliminate Planning Commission, Board of Adjustment or City Council for hearing and deciding final land use decisions (but not comprehensive or long range planning or area-wide regulations) and, instead, use a hearing examiner to make final land use decisions and administrative appeal decisions for the City.

I hope the foregoing is of benefit to the City of Richland as it looks to updating its land use code and decision-making process. If I can be of any assistance to the City or answer other questions regarding the use of a hearing examiner, do not hesitate to call or write.

Very truly yours,

Sent unsigned to avoid delay

Michael C. Walter

MCW/ch

cc: Bill King, Deputy City Manager and
Community Development Services Director
Cathleen Koch, Administrative Services Director
Ms. Ann Bennett, Executive Director
Washington Cities Insurance Authority
Ms. Tanya Crites, Risk Management,
Washington Cities Insurance Authority



MINUTES

RICHLAND PLANNING COMMISSION MEETING No. 7-2014

Richland City Hall – 550 Swift Boulevard – Council Chamber

WEDNESDAY, July 23, 2014

7:00 PM

Call to Order:

Chairman Utz called the meeting to order at 7:00 PM

Attendance:

Present: Commissioners Berkowitz, Boring, Clark, Jones, Wallner, Vice-Chair Moser and Chairman Utz. Also present were City Council Liaison Phil Lemley, Deputy City Manager Bill King, Transportation and Development Manager Jeff Peters, Development Services Manager Rick Simon, Senior Planner Aaron Lambert and Recorder Penny Howard. Commissioner Wise's absence was excused.

Approval of Agenda:

Chairman Utz presented the July 23, 2014 meeting agenda for approval.

The agenda was approved as presented.

Approval of Minutes

Chairman Utz presented the meeting minutes of the May 28, 2014 regular meeting for approval.

A motion was made by Commissioner Boring and seconded by Vice-Chair Moser to approve the amended meeting minutes of the May 28, 2014 regular meeting as written.

The amended May minutes were approved by voice vote.

A motion was made by Commissioner Jones and seconded by Commissioner Boring to approve the meeting minutes of the June 25, 2014 regular meeting as written.

Commissioner Berkowitz requested an amendment.

The June minutes, with the proposed amendment, were approved by voice vote.

Public Comment

Chairman Utz opened the public comment period at 7:07 PM and with no one wishing to speak, it was closed at 7:07 PM.

PUBLIC HEARING

Public Hearing Explanation: Ms. Howard explained the public hearing notice and appeal process and asked Commissioners to identify any conflicts of interest, ex-parte contact or any other appearance of fairness issues.

New Business

1. **APPLICANT: SMI GROUP XV, LLC. (SUP 2014-100 & S2014-102)*
APPROVAL OF A SPECIAL USE PERMIT TO DEVELOP A SINGLE FAMILY
RESIDENTIAL PROJECT IN THE BUSINESS RESEARCH PARK DISTRICT
AND FOR THE SUBDIVISION OF 1.58 ACRES INTO 9 SINGLE FAMILY
RESIDENTIAL LOTS LOCATED AT THE NORTHEAST CORNER OF
SMARTPARK STREET AND FERMI DRIVE**

Mr. Lambert presented the staff report, discussed the undeveloped site and displayed several maps and aerial photographs. He described a five acre private park north of the site that was not part of the proposed project and industrial use situated northwest of the plat. **Mr. Lambert** stated that the Fermi Drive right of way belonged to The Port of Benton. The project met all density and landscaping requirements and he noted their similarity to the Sienna Sky development. **Mr. King** pointed out that the private streets were in the process of moving toward City standards.

Chairman Utz opened the public hearing at 7:15 PM.

Applicant, Bill McKay, 3516 West 46th Avenue, Kennewick: The project was a continuation of the Sienna Sky development with nine more houses. Since the private roads present risk and would not serve the needs of the development, they have been negotiating with the City for inclusion in their street plan.

Chairman Utz closed the public hearing at 7:18 PM.

Discussion:

Commissioner Clark asked about an open area on the map and commented that he thought the proposal was a good use of the property. **Mr. Lambert** explained that the provided photos were from 2012 and homes had been built there.

Vice-Chair Moser requested information on street landscaping standards and requirements. **Mr. Lambert** informed the group that curb and gutter would be installed and sidewalks were required for single family residences. While the location would not be improved in a manner comparable to Gage Boulevard, improvements would occur prior to a right of way transfer to the City. A landscape plan would also be in place, but Fermi Drive, a private street, would have typical back yard landscaping as opposed to curb and gutter. He also reported that the intent was to keep Fermi Drive open. **Mr. McKay** explained that The Port of Benton planned to take Fermi Drive over.

Commissioner Boring offered her support, commented that Sienna Sky was a gorgeous development and hoped this would be as nice.

Commissioner Berkowitz asked about Richland Municipal Code 23.028.020 regarding the prohibition of detached single family dwellings. **Mr. Lambert** explained that the density was right at the minimum, so the rest of the zone needed to be condos, duplexes or apartments. He reported the residential portion at fifteen percent.

Commissioner Jones inquired if the development would need to establish a Home Owners' Association. **Mr. Lambert** stated that it would be required prior to development.

Vice-Chair Moser felt comfortable with the proposal and the Technical Advisory Committee conditions and thought it would be a nice addition to the neighborhood.

Commissioner Jones questioned if Western Sintering had an air permit. **Mr. Lambert** stated that he could check with Benton Clean Air Authority.

A motion was made by Commissioner Boring and seconded by Commissioner Moser to concur with the findings and conclusions set forth in the Staff Report and that the Planning Commission approves Special Use Permit number SUP2014-100, subject to the conditions of approval set forth in the Technical Advisory Committee Report dated February 18, 2014 and concur with the findings and conclusions set forth in the Staff Report and that the Planning Commission recommends approval of the preliminary plat of the SMI Group XV, LLC, City file number S2014-102, subject to the conditions of approval set forth in the Technical Advisory Committee Report dated February 18, 2014.

THE MOTION CARRIED 7-0.

2. APPLICANT: CITY OF RICHLAND (Z2014-101)

ZONING TEXT AMENDMENTS – REVISIONS TO SECTIONS 23.38.070, 23.18.040, 23.38.020, 24.04.030 AND 24.12.010 OF THE RICHLAND MUNICIPAL CODE CONCERNING REQUIREMENTS ASSOCIATED WITH FENCING, ASSESSORY BUILDING AND HOUSE SETBACKS, SUBDIVISION

APPLICATION REQUIREMENTS AND SIZE REQUIREMENTS FOR REQUIRED COMMERCIAL LANDSCAPING TREES CITYWIDE

A motion was made by Commissioner Boring and seconded by Commissioner Jones to remove item number Z2014-101 from the table.

The motion was unanimously approved by voice vote.

Mr. Lambert presented amendments to setbacks for fences and homes on corner lots, setbacks from alley/private access easements as well as setbacks for accessory buildings to the principal dwelling while referring to several digital images.

Chairman Utz opened the public hearing at 7:40 PM.

Mike Berkensile, 451 Westcliffe Drive: Spoke in favor of the amendments and provided images of his property and proposed fence locations. He discussed the rock wall on their property and the adjustments that would be necessary to meet code.

Commissioner Clark informed the group that Mr. Berkensile was a co-worker and asked what changes were necessary for the rock wall to meet code. **Mr. Berkensile** reported that for approximately twenty feet, three feet needed to be removed from the top of the fence in order to be compliant. He also discussed the possibility of a wrought iron fence. **Mr. Lambert** confirmed that the modification would meet code.

Commissioner Berkowitz asked for clarification on a wrought iron fence. **Mr. Lambert** confirmed that a four foot high wrought iron fence was allowable, or a three foot high for solid fence.

Chairman Utz closed the public hearing at 7:46 PM.

Discussion:

Commissioner Boring thanked Mr. Berkensile for sharing pictures of his property which added perspective to the code constraints. She offered support for the changes.

Vice-Chair Moser stated that although initially skeptical, she felt more confident with the safety of the changes due to the visual aids.

Commissioner Berkowitz stated that she was still not comfortable with the fence amendment and suggested a 10 foot setback or an angled fence requirement for corner lots. **Mr. Lambert** explained that the proposal provided approximately fifteen feet from the curb. **Commissioner Berkowitz** preferred the distance of twenty feet.

Chairman Utz inquired if the use of an arborvitae hedge was within code. **Mr. Lambert** informed the group that landscaping was not permitted, but code enforcement was

sometimes necessary when vegetation obstructed the sight triangle at an intersection. **Chairman Utz** pointed out that shrubs were often planted next to fences and since that type of hedge commonly affected drivers' vision, he was comfortable with the proposal. He also confirmed with Mr. Lambert that there were allowable uses for barbed wire.

Commissioner Boring asked for clarification of current setbacks for six foot fences. **Mr. Lambert** stated that any fence required a permit and a right of way permit was also necessary in some situations. He also confirmed that the criteria of each individual fence was reviewed prior to its construction and explained the process which included the review of sight triangles.

Commissioner Berkowitz stated that the permit requirement and review process was helpful. **Mr. Lambert** further explained the review process for fences with particular attention given to fencing on corner lots.

A motion was made by Commissioner Boring and seconded by Commissioner Wallner to concur with the findings and conclusions set forth in Staff Report (Z2014-101) and recommend to the City Council approval of the proposed zoning and subdivision code revisions as found in Exhibit 1 including the revisions received just prior to the meeting.

THE MOTION CARRIED 7-0.

Communications:

Mr. King

- Suggested meeting in the City Manager's Conference Room for an informal workshop discussion after adjournment.

Vice-Chair Moser

- Requested an update on road construction on Canyon Street and in the Willowbrook neighborhood.

Mr. Peters

- Reported that the Canyon Street construction included a significant amount of underground utility services and a complete reconstruction of the roadway.
- Informed all that the Willowbrook project was originally scheduled to begin on July 24th, but the contractor was delayed on another project which moved the start date to Monday (7/28). Equipment calibration would begin on Monday morning and the work was projected to last one week.

Chairman Utz

- Thanked Mr. Lambert for the additional work and information on the proposals.

ADJOURNMENT:

The July 23, 2014 Richland Planning Commission Regular Meeting 7-2014 was adjourned at 8:02 PM. The next regular meeting of the Planning Commission will be held on August 27, 2014.

PREPARED BY: Penny Howard, Recorder, Planning and Development

REVIEWED BY:

Rick Simon, Secretary
Richland Planning Commission



STAFF REPORT

TO: PLANNING COMMISSION
FILE NO.: Z2014-102

PREPARED BY: AARON LAMBERT
HEARING DATE: AUGUST 27, 2014

GENERAL INFORMATION:

APPLICANT: BRIAN AND CATHY KEELE

REQUEST: REZONE OF A 1.39 ACRE SITE FROM C-1, NEIGHBORHOOD
RETAIL BUSINESS TO C-3, GENERAL BUSINESS.

LOCATION: SOUTHEAST CORNER OF QUEENSGATE DRIVE AND JERICHO
RD.

REASON FOR REQUEST

The Applicant is requesting a change in zoning to accommodate their plans for future commercial development of the subject property. They intend to develop a nursery and fruit stand on the site with outdoor displays and sales. The existing C-1 zoning does not allow for outdoor sales while the requested C-3 zoning would.

FINDINGS AND CONCLUSIONS

Staff has completed its review of the request for a change in zoning (Z2014-102) and submits that:

1. The City of Richland Comprehensive Plan, adopted in 1997, currently designates the subject property as suitable for commercial land uses with a designation of Business Commerce.
2. The subject property is currently zoned C-1 Neighborhood Retail Business.
3. The requested zoning of C-3, General Business is intended to be applied to properties that carry a commercial land use designation under the City's Comprehensive Plan, according to the purpose statement contained in RMC Section 23.22.010(D).
4. The proposed change in zoning would be consistent with the City's comprehensive plan.

5. The site, given its proximity and frontage upon Queensgate Drive, an arterial street, is a logical location for commercial uses that could satisfy the demand for commercial services generated by the number of residents in the immediate area as well as those utilizing Queensgate Drive, Keene Road and the Interstate I-182 interchange to navigate through the community.
6. The existing and proposed zoning designations permit many of the same commercial uses. However the proposed C-3 designation does allow for a broader range of commercial establishments which may have ancillary shop work, storage and outdoor display. Given the relatively small size of the site, a large retail use that would have a detrimental impact to the intersection or adjacent properties would be difficult to site at this location. Development standards such as required setbacks exist to mitigate impacts. The purpose statements for the C-1 & C-3 districts are found in Exhibit 1 and the allowed uses and development standards are found in Exhibit 8.
7. Based on the above findings and conclusions, approval of the zone change request to rezone the 1.39 acres located at the southeast corner of the intersection of Queensgate Drive and Jericho Road to C-3, General Business zoning would be in the best interest of the community of Richland.

RECOMMENDATION

Staff recommends that the Planning Commission concur with the findings and conclusions set forth in Staff Report (Z2014-102) and recommend approval to the City Council of the request to rezone 1.39 acres located at the southeast corner of the intersection of Queensgate Drive and Jericho Road to C-3, General Business zoning.

EXHIBITS

1. Supplemental Information
2. Vicinity Map
3. Aerial Photo
4. Site Photos
5. Zoning & Comprehensive Plan Maps
6. Hearing Notice
7. Application Materials
8. C-1 & C-3 Zoning Regulations, (allowed uses & site requirements)

EXHIBIT (1)

SUPPLEMENTAL INFORMATION

(Z2014-102)

DESCRIPTION OF PROPOSAL

The proposal consists of a rezone request for an approximately 1.39-acre parcel C-1 Neighborhood Retail Business to C-3 General Business. The parcel is located on the southeast corner of the intersection of Queensgate Drive and Jericho Rd. The Applicant is requesting the change in zoning to accommodate their plans to develop a nursery and fruit stand on the site with outdoor displays and sales which is not permitted in the existing zoning but is in the C-3 district..

SITE DATA

Comprehensive Plan Designation: Commercial

Current Zoning: (C-1) Neighborhood Retail Business

Proposed Zoning: (C-3) General Business

Site Size: 1.39 acres (60,655 SF)

Physical Features: The site has frontage on Queensgate Drive and Jericho Rd. Existing concrete curbing along Queensgate Drive prevents direct access from said road with the current access found on the north boundary from Jericho Road. Permanent access will be determined with the future development of the vacant site. City utilities are adjacent to the property. The Parks Department made note that the Queensgate frontage is planned to have a 10 foot wide pathway parallel to the road. The site is vacant with invasive vegetation on it.

SURROUNDING ZONING AND EXISTING LAND USES

See also Exhibits 1, Aerial Photo and 7, Zoning Map

North	Undeveloped property located across Jericho Rd. and under the jurisdiction of Benton County
South	Undeveloped property zoned C-1, Neighborhood Retail Business
East	Developed with a single family residence and under the jurisdiction of Benton County.
West	Developed for commercial trailer sales across Queensgate Dr. and zoned C-3, General Business.

ZONING DISTRICT DESCRIPTIONS

Existing C-1 Neighborhood Retail Business Zone

The purpose of the C-1 district (as specified in Section 23.2.010(B) of the Richland Municipal Code) is as follows:

The neighborhood retail business use district (C-1) is a limited retail business zone classification for areas which primarily provide retail products and services for the convenience of nearby neighborhoods with minimal impact to the surrounding residential area. This zoning classification is intended to be applied to some portions of the city that are designated commercial under the city of Richland comprehensive plan.

Proposed C-3 General Business Zone

The purpose of the C-3 district (as specified in Section 23.2.010(D) of the Richland Municipal Code) is as follows:

The general business use district (C-3) is a zone classification providing a use district for commercial establishments which require a retail contact with the public together with incidental shop work, storage and warehousing, or light manufacturing and extensive outdoor storage and display, and those retail businesses satisfying the essential permitted use criteria of the C-2 use district. This zoning classification is intended to be applied to some portions of the city that are designated commercial under the city of Richland comprehensive plan.

A summary of the uses permitted in both zoning districts is included in exhibit 8.

ENVIRONMENTAL REVIEW

The rezone is not subject to SEPA environmental review as it falls into Washington State Administrative Code (WAC) exemption WAC 197-11-800(6)(c) as follows:

- (6) **Land use decisions.** *The following land use decisions shall be exempt:*
- (c) *Where an exempt project requires a rezone, the rezone is exempt only if:*
- (i) *The project is in an urban growth area in a city or county planning under RCW [36.70A.040](#);*
 - (ii) *The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and*
 - (iii) *The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.*

ANALYSIS

The comprehensive plan designates the site as commercial which allows for the application of any of the six commercial zoning classifications adopted by the City. The rezone would be consistent with the C-3 zoning across Queensgate Drive. The parcel is not sizeable enough to support large scale outdoor sales such as that for vehicle sales. Rather, the size lends itself well to a mixed-use development as planned with a smaller retail building and accessory outdoor sales and display.

SUMMARY

Approval of the proposed rezone as requested by the property owners would be consistent with the City's comprehensive plan and would allow for the future use of the parcel for outdoor display and sales.

EXHIBIT (2)



EXHIBIT (3)



Not to Scale
Drafted: 8/20/14



EXHIBIT (4)

SITE PHOTOS — Rezone Request, SE Corner of Queensgate Dr. & Jericho Rd., File No. Z2014-102



View looking generally southwest to northeast from Queensgate Drive.

Not to Scale

Source:

Google

Street View



SITE PHOTOS — Rezone Request, SE Corner of Queensgate Dr. & Jericho Rd., File No. Z2014-102



View looking generally west to east from Queensgate Drive.

Not to Scale

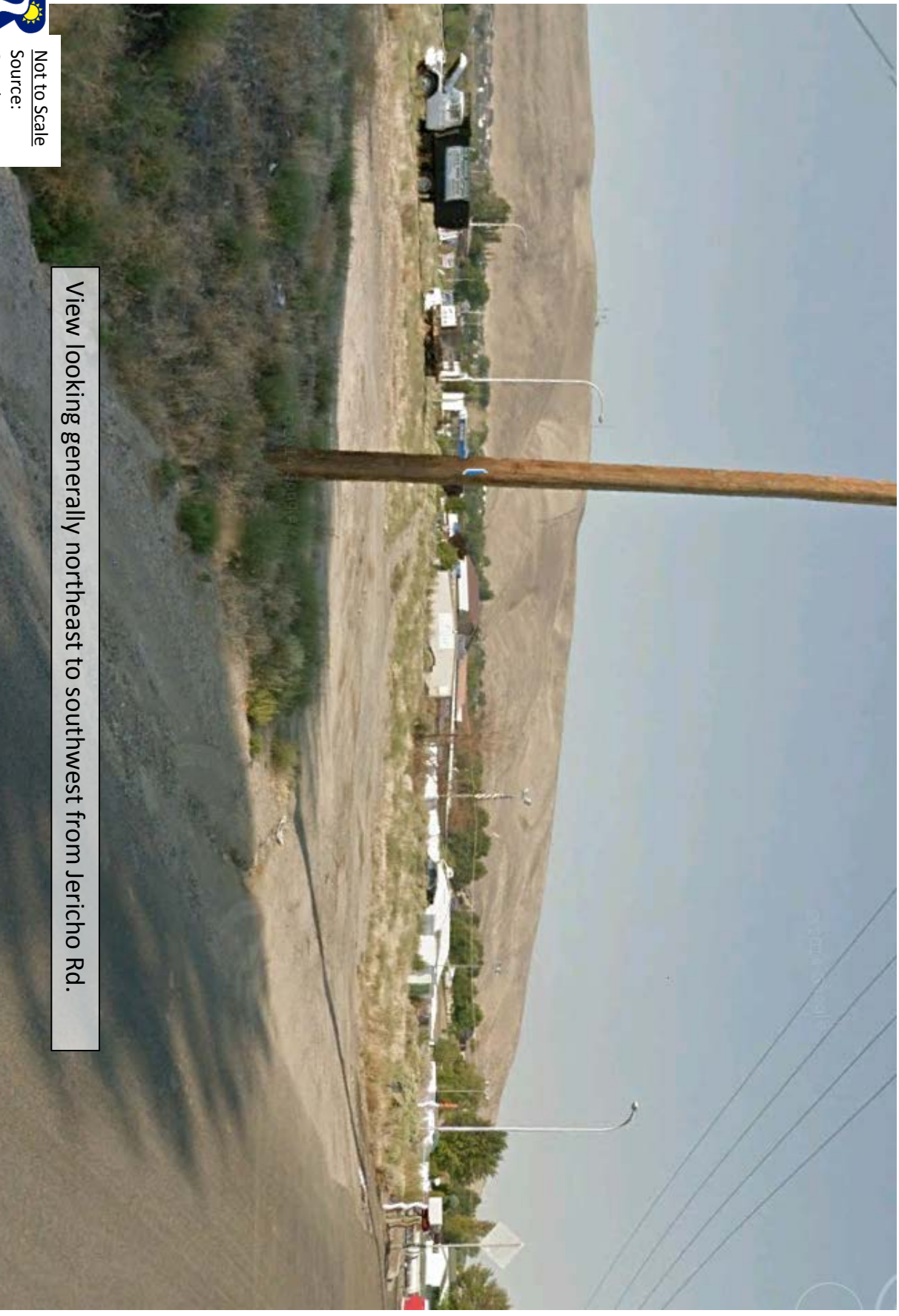
Source:

Google

Street View



SITE PHOTOS — Rezone Request, SE Corner of Queensgate Dr. & Jericho Rd., File No. Z2014-102



View looking generally northeast to southwest from Jericho Rd.

Not to Scale

Source:

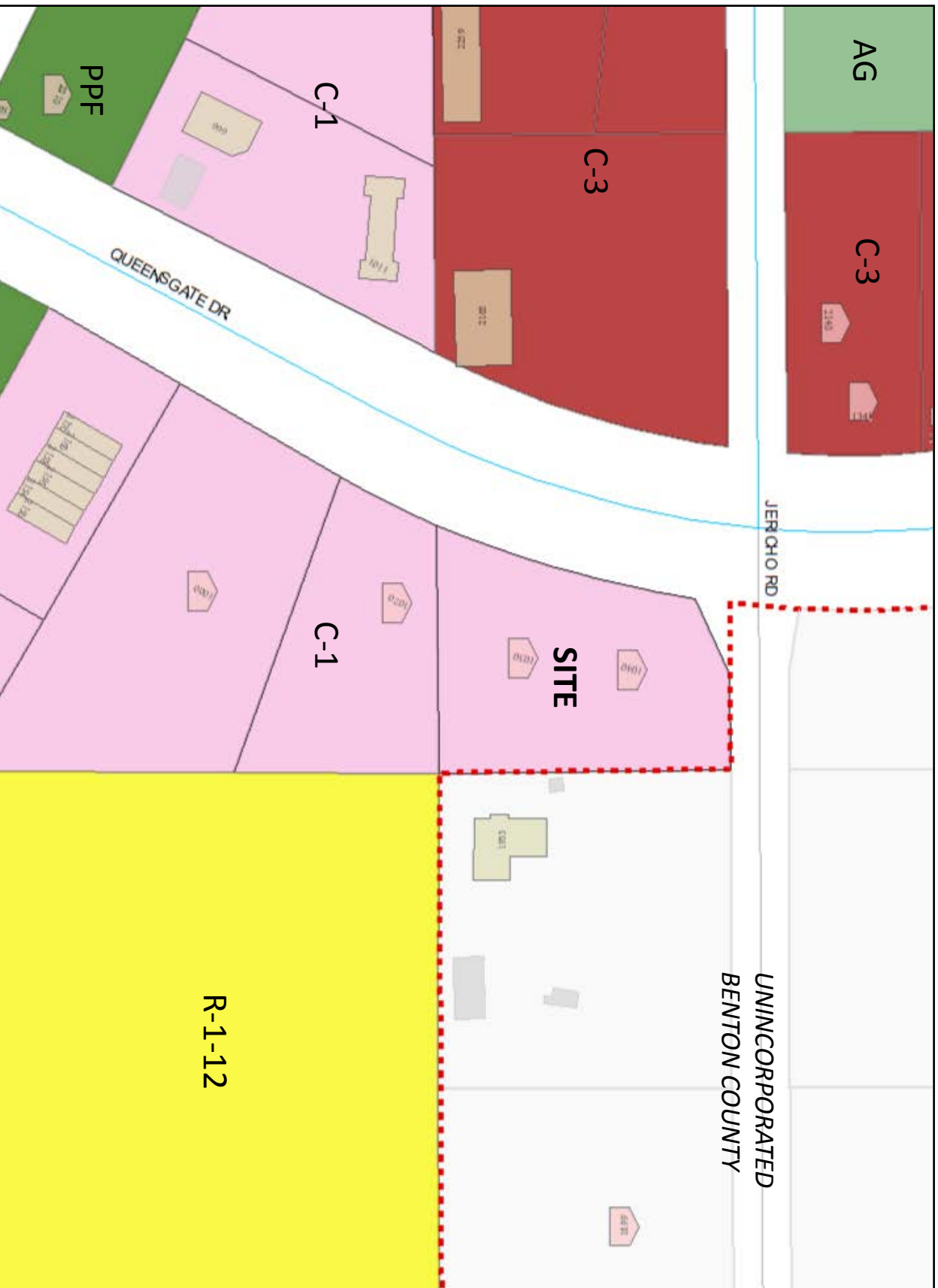
Google

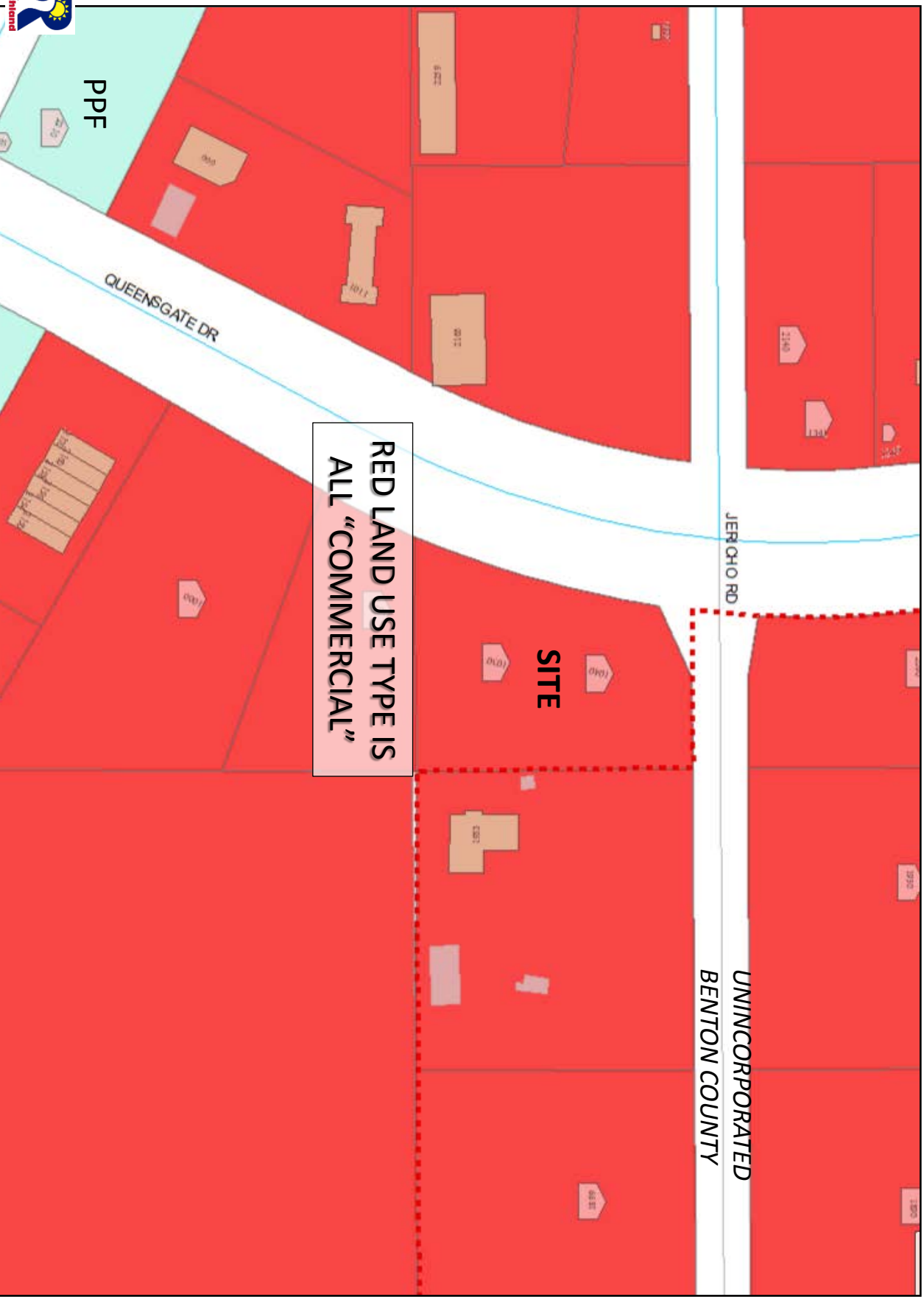
Street View



EXHIBIT (5)

ZONING MAP— Rezoning Request, SE Corner of Queensgate Dr. & Jericho Rd., File No. Z2014-102





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EXHIBIT (6)



CITY OF RICHLAND **NOTICE OF APPLICATION** **AND PUBLIC HEARING (Z2014-102)**

Notice is hereby given that application has been submitted for a rezone from Neighborhood Retail Business (C-1) zoning to General Business (C-3) zoning for the undeveloped 1.3 acre parcel located at the southeast corner of Queensgate Drive and Jericho Rd. The purpose of the rezone is to allow for outdoor displays associated with a proposed nursery and fruit stand.

The Richland Planning Commission, on Wednesday, August 27, 2014, will conduct a public hearing and review of the application at 7:00 p.m. in the Richland City Hall Council Chambers, 505 Swift Boulevard. All interested parties are invited to attend and present testimony at the public hearing.

Any person desiring to express his views or to be notified of any decisions pertaining to this application should notify Aaron Lambert, Senior Planner, 840 Northgate Drive, P.O. Box 190, Richland, WA 99352. Comments may also be faxed to (509) 942-7764 or emailed to alambert@ci.richland.wa.us. Written comments should be received no later than 5:00 p.m. on Tuesday, August 18, 2014 to be incorporated into the Staff Report. Comments received after that date will be entered into the record at the hearing.

Copies of the staff report and recommendation will be available in the Development Services Division Office, and at the Richland Public Library beginning Friday, August 22, 2014

The proposed application will be reviewed in accordance with the regulations in RMC Chapters 23.70.190-280. Appeal procedures of decisions related to the above referenced application are set forth in RMC Chapter 19.70.060. Contact the Richland Planning Division at the above referenced address with questions related to the available appeal process.

AARON LAMBERT,
SENIOR PLANNER

EXHIBIT (7)

Planning & Development Services Division • Current Planning Section
840 Northgate Drive • Richland, WA 99352
General Information: 509/942-7794 • Fax: 509/942-7764

FILE NO. Z2014-102

Received: 7/16/14

Petition for Change of Zoning District Classification

Application is hereby made to the City of Richland for a change of zone, pursuant to Section 23.82.190 of the City of Richland Municipal Code.

The following required information must be typed or printed legibly in the appropriate spaces.

SECTION I – APPLICANT INFORMATION			
Applicant's Name: <u>Brian and Cathy Keele</u>			
Address: <u>57421 N 385 OR NE</u>			
City: <u>Benton City</u>		State: <u>WA</u>	Zip: <u>99320</u>
Phone: <u>967-0943</u>	Fax:	Other and/or e-mail address: <u>bdkeele@clearwire.net</u>	
Please check under what capacity you are filing:			
<input type="checkbox"/> Recorded owner of the property as of		<input checked="" type="checkbox"/> Purchasing under contract as of <u>7/8/14</u>	
<input type="checkbox"/> The lessee as of		<input type="checkbox"/> The authorized agent of any of the foregoing, duly authorized in writing (written authorization must be attached to application).	
SECTION II – PROPERTY LOCATION AND GENERAL DESCRIPTION			
Street address(es) of property for which the zone change is requested, if applicable: <u>NKA Queensgate</u>			
Relationship to adjacent streets (i.e., west of Main Street between 1 st Avenue and 2 nd Avenue): <u>S.E. Corner at Jericho and Queensgate - vacant land</u>			
General description of development status (i.e., vacant, agricultural, buildings, or miscellaneous improvement): <u>Vacant</u>			
Size of petition area <u>1.3</u> acres and		square feet	
SECTION III - CHANGE OF ZONE REQUEST			
A change of zone from <u>C-1</u>		To <u>C-3</u>	
is requested for the property described in Section II of this application.			
SECTION IV – JUSTIFICATION			
State the reason(s) for the requested change of zone: <u>To allow for outdoor displays associated with a proposed nursery and fruit stand.</u>			

[Continued

I DECLARE UNDER PENALTY OF THE PERJURY LAWS THAT THE INFORMATION I HAVE PROVIDED ON THIS FORM/APPLICATION IS TRUE, CORRECT AND COMPLETE.

DATED THIS 14 DAY OF July, 2014.

BR Kull

Applicant's Signature

57421 N 385 PR NE

Address

Benton City, WA 99320

City, State, Zip

967-0943

Phone

Carly Kelle

Applicant's Signature

57421 N. 385 Pr. NE

Address

Benton City, WA 99320

City, State, Zip

967-0943

Phone

FOR OFFICE USE ONLY

Date accepted for filing _____

Items enclosed: Filing fee and Title Insurance
Company Ownership Report showing all property
Owners of Record within 300-feet.

City Official's Signature

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EXHIBIT (8)



23.22.030 Commercial use districts permitted land uses.

In the following chart, land use classifications are listed on the vertical axis. Zoning districts are listed on the horizontal axis.

A. If the symbol “P” appears in the box at the intersection of the column and row, the use is permitted, subject to the general requirements and performance standards required in that zoning district.

B. If the symbol “S” appears in the box at the intersection of the column and row, the use is permitted subject to the special use permit provisions contained in Chapter [23.46](#) RMC.

C. If the symbol “A” appears in the box at the intersection of the column and the row, the use is permitted as an accessory use, subject to the general requirements and performance standards required in the zoning district.

D. If a number appears in the box at the intersection of the column and the row, the use is subject to the general conditions and special provisions indicated in the corresponding note.

E. If no symbol appears in the box at the intersection of the column and the row, the use is prohibited in that zoning district.

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Agricultural Uses								
Raising Crops, Trees, Vineyards								P
Automotive, Marine and Heavy Equipment								
Automotive Repair – Major				P				
Automotive Repair – Minor		P	P	P	S			
Automotive Repair – Specialty Shop		S	P	P	S			

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Automobile Service Station		P ¹	P ¹	P ¹	S ¹			
Auto Part Sales		P	P	P	S			
Boat Building				P				
Bottling Plants				P				P ²⁸
Car Wash – Automatic or Self-Service		P ²	P ²	P ²	S ²			
Equipment Rentals			P	P				
Farm Equipment and Supplies Sales				P				
Fuel Station/Mini Mart	S	P	P	P	P			
Heavy Equipment Sales and Repair				P				
Manufactured Home Sales Lot				P				
Marinas						P	P	
Marine Equipment Rentals				P		P	P	
Marine Gas Sales						A	A	
Marine Repair				P		P	P	
Towing, Vehicle Impound Lots				S ³				
Truck Rentals			P	P				
Truck Stop – Diesel Fuel Sales			S	P				
Truck Terminal				P				

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Vehicle Leasing/Renting			P ⁴	P	S ⁴			
Vehicle Sales			P ⁴	P	S ⁴			
Warehousing, Wholesale Use				P				
Business and Personal Services								
Animal Shelter				S ⁵				
Automatic Teller Machines	P	P	P	P	P	P		P
Commercial Kennel				P ⁵				
Contractors' Offices		P	P	P	P			
Funeral Establishments			P	P				
General Service Businesses	A	P	P	P	P	P		
Health/Fitness Facility	A	P	P	P	P	A	P	
Health/Fitness Center			P	P	P		P	
Health Spa		P	P	P	P	P		P
Hospital/Clinic – Large Animal				S ⁵				
Hospital/Clinic – Small Animal			S ⁵	P ⁵	P			
Laundry/Dry Cleaning, Com.				P	P ²⁹			
Laundry/Dry Cleaning, Neighborhood		P	P	P	P			
Laundry/Dry Cleaning, Retail	P	P	P	P	P	P		

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Laundry – Self-Service		P	P	P	P			
Mini-Warehouse				P ⁶				
Mailing Service	P	P	P	P	P	P		
Personal Loan Business	P	P	P	P	P			
Personal Services Businesses	A	P	P	P	P	P		
Photo Processing, Copying and Printing Services	P	P	P	P	P	P		
Telemarketing Services	P		P	P	P			
Video Rental Store		P	P	P	P	P		P
Food Service								
Cafeterias	A		A	A	A	A	A	
Delicatessen	P	P	P	P	P	P	P	P
Drinking Establishments		P ⁷	P	P	P	P	P	P
Micro-Brewery			P	P	P	P	P	P
Portable Food Vendors ²⁶	A ²⁷	A ²⁷	A ²⁷	A ²⁷	A ²⁷	A ²⁷	A ²⁷	A ²⁸
Restaurants/Drive-Through		S ⁸	P ⁸	P ⁸	S ^{8, 9}	S ^{8, 9}		
Restaurants/Lounge		P ⁷	P	P	P	P	P	P
Restaurants/Sit Down	A	P	P	P	P	P	P	P
Restaurants/Take Out		P	P	P	P	P		P

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Restaurants with Entertainment/Dancing Facilities		P ⁷	P	P	P	P	P	P
Wineries – Tasting Room		P ⁷	P	P	P	P	P	P
Industrial/Manufacturing Uses								
Laundry and Cleaning Plants				P				P ²⁸
Light Manufacturing Uses				P				P ²⁸
Warehousing and Distribution Facilities				P				P ²⁸
Wholesale Facilities and Operations				P				P ²⁸
Wineries – Production				P				P
Office Uses								
Financial Institutions	P	P/S ²²	P	P	P/S ²²	P		
Medical, Dental and Other Clinics	P	P	P	P	P	P		
Newspaper Offices and Printing Works			P	P	P			
Office – Consulting Services	P	P	P	P	P	P		P ²⁸
Office – Corporate	P		P	P	P	P		P ²⁸
Office – General	P	P	P	P	P	P		P ²⁸
Office – Research and Development	P		P	P	P			P ²⁸
Radio and Television Studios			P	P	P			
Schools, Commercial	P		P	P	P	P		

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Schools, Trade			P	P	P			P ²⁸
Travel Agencies	P	P	P	P	P	P		
Public/Quasi-Public Uses								
Churches	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P	P ¹⁰		
Clubs or Fraternal Societies	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰	P ¹⁰		
Cultural Institutions	P ¹⁰	P ¹⁰	P ¹⁰		P ¹⁰	P ¹⁰		P ¹⁰
General Park O&M Activities	P	P	P	P	P	P	P	P
Hospitals	P		P	P	P			
Homeless Shelter				P				
Passive Open Space Use	P	P	P	P	P	P	P	P
Power Transmission and Irrigation Wasteway Easements and Utility Uses	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹
Public Agency Buildings	P	P	P	P	P	P	P	
Public Agency Facilities	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹	P ¹¹
Public Campgrounds				S			S	
Public Parks	P	P	P	P	P		P	P
Schools	P ¹²	P ¹²	P ¹²	P ¹²	P ¹²	P ¹²		
Schools, Alternative	P ¹³	P ¹³	P ¹³	P ¹³	P ¹³			
Special Events Including Concerts, Tournaments and	P	P	P	P	P	P	P	P

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Competitions, Fairs, Festivals and Similar Public Gatherings								
Trail Head Facilities	P	P	P	P	P	P	P	P
Trails for Equestrian, Pedestrian, or Nonmotorized Vehicle Use	P	P	P	P	P	P	P	P
Recreational Uses								
Art Galleries			P	P	P	P	P	P
Arcades		P	P	P	P	P	P	
Boat Mooring Facilities						P	P	
Cinema, Indoor			P	P	P	P	P	
Cinema, Drive-In			P	P				
Commercial Recreation, Indoor		S ⁷	P	P	P	P	P	
Commercial Recreation, Outdoor			P	P		P	P	
House Banked Card Rooms				P ¹⁴	P ¹⁴	P ¹⁴	P ¹⁴	
Recreational Vehicle Campgrounds				S ¹⁵			S ¹⁵	
Recreational Vehicle Parks				S ¹⁶			S ¹⁶	
Stable, Public				S ¹⁷				
Theater		P ⁷	P	P	P	P	P	P
Residential Uses								
Accessory Dwelling Unit		A	A	A	A	A		A

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Apartment, Condominium (3 or more units)	P		P ¹⁸		P	P		
Assisted Living Facility	P		P		P ¹⁸	P		
Bed and Breakfast	P	P	P	P	P	P	P	P
Day Care Center	P ¹⁹	P ¹⁹	P ¹⁹	P ¹⁹	P ¹⁹	P ¹⁹		
Dormitories, Fraternities, and Sororities	P				P	P		
Dwelling, One-Family Attached						P ²⁵		
Dwelling, Two-Family Detached						P		
Dwelling Units for a Resident Watchman or Custodian				A				P ²⁸
Family Day Care Home	P ¹⁹					P ¹⁹		
Houseboats						P	P	
Hotels or Motels	P		P	P	P	P	P	P
Nursing or Rest Home	P		P		P ¹⁸	P		
Recreational Club	A				A	A		
Senior Housing	P				P ¹⁸	P		
Temporary Residence	P ²⁰	P ²⁰	P ²⁰	P ²⁰	P ²⁰	P ²⁰		P
Retail Uses								
Adult Use Establishments				P ²¹				
Apparel and Accessory Stores		P	P	P	P	P		P

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Auto Parts Supply Store		P	P	P	P			
Books, Stationery and Art Supply Stores	A	P	P	P	P	P		P
Building, Hardware, Garden Supply Stores		P	P	P	P			
Department Store			P	P	P			
Drug Store/Pharmacy	A	P/S ²²	P	P	P	P		
Electronic Equipment Stores		P	P	P	P	P		
Food Stores		P	P	P	P	P		
Florist		P	P	P	P	P		P
Furniture, Home Furnishings and Appliance Stores		P	P	P	P			
Landscaping Material Sales			A	P				
Lumberyards				P				
Nursery, Plant				P				P
Office Supply Store	A	P	P	P	P	P		
Outdoor Sales				P				
Parking Lot or Structure	P	P	P	P	A	P		P
Pawn Shop				P				
Pet Shop and Pet Supply Stores		P	P	P	P			
Retail Hay, Grain and Feed Stores				P				

Land Use	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Secondhand Store			P	P	P	P		
Specialty Retail Stores		P	P	P	P	P		P
Miscellaneous Uses								
Bus Station				P	P			
Bus Terminal				P	P			
Bus Transfer Station	P		P	P	P		P	
Cemetery	P		P	P				
Community Festivals and Street Fairs	P	P	P	P	P	P	P	P
Convention Center	P		P	P	P	P	P	
Micro- and Macro-Antennas	P	P	P	P	P	P	P	P
Monopole			S ²³	P/S ²³	S ²³			
On-Site Hazardous Waste Treatment and Storage	A	A	A	A	A	A	A	A
Outdoor Storage		A ²⁴	A ²⁴	P ²⁴				
Storage in an Enclosed Building	A	A	A	A	A	A	A	A ²⁸

1. RMC [23.42.280](#) 2. RMC [23.42.270](#) 3. RMC [23.42.320](#) 4. RMC [23.42.330](#) 5. RMC [23.42.040](#)
6. RMC [23.42.170](#) 7. RMC [23.42.053](#) 8. RMC [23.42.047](#) 9. RMC [23.42.055](#) 10. RMC [23.42.050](#)
11. RMC [23.42.200](#) 12. RMC [23.42.250](#) 13. RMC [23.42.260](#) 14. RMC [23.42.100](#) 15. RMC [23.42.230](#)
16. RMC [23.42.220](#) 17. RMC [23.42.190](#)
18. Use permitted on upper stories of multi-story buildings, if main floor is used for commercial or office uses.

19. RMC [23.42.080](#) 20. RMC [23.42.110](#) 21. RMC [23.42.030](#) 22. Use permitted, requires special use permit with drive-through window. 23. Chapter [23.62](#) RMC 24. RMC [23.42.180](#) 25. RMC [23.18.025](#) 26. See definition, RMC [23.06.780](#) 27. RMC [23.42.185](#)

28. Activities permitted only when directly related to and/or conducted in support of winery operations.

29. Within the central business district (CBD), existing commercial laundry/dry cleaning uses, established and operating at the time the CBD district was established, are allowed as a permitted use. All use of the land and/or buildings necessary and incidental to that of the commercial laundry/dry cleaning use, and existing at the effective date of the CBD district, may be continued. Commercial laundry/dry cleaning uses not established and operating at the time the CBD district was established are prohibited.

[Ord. 28-05 § 1.02; Ord. 15-07; Ord. 04-09; Ord. 07-10 § 1.02; amended during 2011 recodification; Ord. 32-11 § 5].

23.22.040 Site requirements and development standards for commercial use districts.

In the following chart, development standards are listed on the vertical axis. Zoning districts are listed on the horizontal axis. The number appearing in the box at the intersection of the column and row represents the dimensional standard that applies to that zoning district.

Standard	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Minimum Lot Area	None	None	None	None	None	None	None	None
Maximum Density – Multifamily Dwellings (units/square feet)	1:1,500	N/A	N/A	N/A	None	1:1,500	N/A	N/A
Minimum Lot Width – One-Family Attached Dwellings	N/A	N/A	N/A	N/A	N/A	30 feet	N/A	N/A
Minimum Front Yard Setback ¹⁴	20 feet	45 feet ¹	0 feet ²	0 feet ²	CBD, Parkway, Uptown Districts: 0 feet min. – 20 feet max. ^{3, 11, 13} Medical District: 0 feet min.	Note 4,5	Note 4	20 feet
Minimum Side Yard Setback	0 feet ⁶	0 feet ⁷	None	None	0 feet ^{6,8}	0 feet ^{5,9}	0 feet	0 feet ^{6,8}

Standard	C-LB	C-1	C-2	C-3	CBD	WF	CR	CW
Minimum Rear Yard Setback	0 feet ^{6,8}	0 feet ⁷	None	None	0 feet ^{6,8}	0 feet ^{5,8,10}	0 feet	0 feet ^{6,8}
Maximum Building Height ¹⁴	55 feet	30 feet	80 feet	80 feet	CBD – 110 feet Medical – 140 feet Parkway – 50 feet Uptown – 50 feet	35/55 feet ¹²	35/55 feet ¹²	35 feet
Minimum Dwelling Unit Size (in square feet, excluding porches, decks, balconies and basements)	500 feet	N/A	N/A	N/A	500 feet	500 feet	N/A	N/A

- Each lot shall have a front yard 45 feet deep or equal to the front yards of existing buildings in the same C-1 district and within the same block.
- No setback required if street right-of-way is at least 80 feet in width. Otherwise, a minimum setback of 40 feet from street centerline is required.
- Unless a greater setback is required by Chapter [12.11](#) RMC, Intersection Sight Distance.
- Front and Side Street. No building shall be closer than 40 feet to the centerline of a public right-of-way. The setback area shall incorporate pedestrian amenities such as increased sidewalk width, street furniture, landscaped area, public art features, or similar features.
- In the case of attached one-family dwelling units, setback requirements shall be as established for attached dwelling units in the medium-density residential small lot (R-2S) zoning district. Refer to RMC [23.18.040](#).
- In any commercial limited business (C-LB), central business (CBD) or in any commercial winery (CW) zoning district that directly abuts a single-family zoning district, the following buffer, setback and building height regulations shall apply to all structures:
 - Within the commercial limited business (C-LB), the central business district (CBD) and the commercial winery (CW) districts, buildings shall maintain at least a 35-foot setback from any property that is zoned for single-family residential use. Single-family residential zones include R-1-12 – single-family residential 12,000, R-1-10 – single-family residential 10,000, R-2 – medium-density residential, R-2S – medium-density residential small lot, or any residential planned unit development that is comprised of single-family detached dwellings.
 - Buildings that are within 50 feet of any property that is zoned for single-family residential use in commercial limited business (C-LB) and the commercial winery (CW) districts and buildings that are within 50 feet of any property that is zoned for and currently developed with a single-family residential use in the central business district (CBD) (as defined in footnote (6)(a)) shall not exceed 30 feet in height. Beyond the area 50 feet from any property that is zoned for single-family residential use, building height may be increased at the rate of one foot in building height for each additional one foot of setback from property that is zoned for single-family residential use to the maximum building height allowed in the C-LB, CW and CBD zoning districts, respectively.
 - A six-foot-high fence that provides a visual screen shall be constructed adjacent to any property line that adjoins property that is zoned for single-family residential use, or currently zoned for and developed with a single-family residential use in the CBD district. Additionally, a 10-foot landscape strip shall be provided adjacent to the fence. This landscape strip may be used to satisfy the landscaping requirements established for the landscaping of parking facilities as identified in RMC [23.54.140](#).
 - In the C-LB and CW districts, a 20-foot setback shall be provided for any side yard that adjoins a street.
- Side yard and rear yard setbacks are not required except for lots adjoining a residential development, residential district, or a street. Lots adjoining either a residential development or residential district shall maintain a minimum 15-foot setback. Lots adjoining a street shall maintain a minimum 20-foot setback. Required side or rear yards shall be landscaped or covered with a hard surface, or a combination of both. No accessory buildings or structures shall be located in such yards unless otherwise permitted by this title.

8. No minimum required, except parking shall be set back a minimum of five feet to accommodate required landscape screening as required under RMC [23.54.140](#).
9. Side Yard. No minimum, except parking shall be set back a minimum of five feet, and buildings used exclusively for residences shall maintain at least one foot of side yard for each three feet or portion thereof of building height. Side yards adjoining a residential district shall maintain setbacks equivalent to the adjacent residential district.
10. No minimum, except parking shall be set back a minimum of five feet. Rear yards adjoining a residential district shall maintain setbacks equivalent to the adjacent residential district.
11. Commercial developments such as community shopping centers or retail centers over 40,000 square feet in size and typically focused around a major tenant, such as a supermarket grocery, department store or discount store, and supported with smaller “ancillary” retail shops and services located in multiple building configurations, are permitted front and street side maximum setback flexibility for the largest building. Maximum setback standards on any other new buildings may be adjusted by the planning commission as part of the alternative design review as set forth in the performance standards and special requirements of RMC [23.22.020\(E\)\(9\)](#).
12. All buildings that are located in both the waterfront (WF) district and that fall within the jurisdictional limits of the Shoreline Management Act shall comply with the height limitations established in the Richland shoreline master program (RMC Title [26](#)). Buildings in the WF district that are not subject to the Richland shoreline master program shall not exceed a height of 35 feet; unless the planning commission authorizes an increase in building height to a maximum height of 55 feet, based upon a review of the structure and a finding that the proposed building is aesthetically pleasing in relation to buildings and other features in the vicinity and that the building is located a sufficient distance from the Columbia River to avoid creating a visual barrier.
13. Physical additions to existing nonconforming structures are not subject to the maximum front yard setback requirements.
14. The medical, uptown and parkway districts of the CBD zoning district are established as shown by Plates 23.22.040(1), (2) and (3).

STAFF REPORT

TO: PLANNING COMMISSION
FILE NO.: Z2014-105

PREPARED BY: RICK SIMON
MEETING DATE: AUGUST 27, 2014

GENERAL INFORMATION:

APPLICANT: CITY OF RICHLAND Z2014-105

REQUEST: TEXT AMENDMENTS CREATING A NEW SECTION 23.08.100 OF
THE RICHLAND MUNICIPAL CODE BANNING MARIJUANA USES.

LOCATION: CITYWIDE

REASON FOR REQUEST:

Following the passage of I-502 authorizing the retail sale, processing and production of recreational marijuana, the City Council has put a moratorium in place on marijuana uses. This proposed code amendment would prohibit marijuana retail sales, processing and production uses within the City.

FINDINGS AND CONCLUSIONS

Staff has completed its review of the proposed amendment to the city's development regulations and submits that:

1. The state law, under the provisions of I-502, authorizes the retail sale, processing and production of marijuana subject to specific locational criteria and limitations relating to the number of such facilities;
2. The State Liquor Control Board, which is the state agency tasked with regulating marijuana uses developed a licensing system that established standards for all persons applying for a license to engage in the retail sale, processing or production of marijuana;
3. To date, the only applications for licensing marijuana uses by the Liquor Control Board proposing location within the City of Richland have been rejected for non-compliance with the licensing criteria;
4. The State Attorney General has authored an opinion that while municipal governments are authorized to permit marijuana uses under I-502, they are not mandated to permit such uses within their jurisdictional boundaries;

5. Federal law classifies marijuana as a Class I drug, possession and use of which is a felony, and is in conflict with the provisions of I-502;
6. The current federal administration has determined that enforcement of marijuana laws in Washington State will not be actively pursued; however; this policy could be changed by this or a future administration;
7. The City of Richland is home to a significant population of federal employees and contractors, for whom marijuana use remains illegal and for whom violation of federal law would result in loss of job.
8. Other jurisdictions within the Tri-City region, including the cities of Kennewick and Pasco have adopted marijuana use bans in their zoning codes.
9. Based upon the above findings and conclusions, the adoption of the City's amendments to Section 23.08.100 of the Richland Municipal Code is in the best interest of the community of Richland.

RECOMMENDATION

Staff recommends the Planning Commission concur with the findings and conclusions set forth in Staff Report (Z2014-105) and recommend to the City Council adoption of the a new Section 23.08.100 of the Richland Municipal Code – prohibiting marijuana uses.

ATTACHMENTS

- A. Supplemental Information
- B. Proposed Code Amendment

ATTACHMENT

(A)

SUPPLEMENTAL INFORMATION

EXISTING CODE

The current City code is silent on marijuana land uses that have been permitted with the passage of I-502 and the rules subsequently developed by the State Liquor Control Board. City Council has put a moratorium in place prohibiting marijuana uses until the City has an opportunity to develop appropriate regulations to govern this use. The current code does include a provision that indirectly prevents marijuana use. Section 23.08.070 in pertinent part states: *"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."*

PROPOSED AMENDMENTS

The proposed code amendment would specifically ban both recreational and medical marijuana uses that are authorized under current state law. The amendment would also take the current code language disallowing uses that are in violation of federal law and place this code language into a new Section 23.38.100 of the City code. A complete copy of the proposed code language is attached.

ANALYSIS

The current conflict between state and federal law creates a hardship for local government in that it sets up a condition in which local government cannot be compliant with both state and federal law. The Attorney General's opinion indicates that while cities can allow marijuana uses within their boundaries, they are not mandated to do so. That opinion, if valid, provides the City with a seemingly safe option of banning marijuana uses. However, some cities having declared bans of their own are being sued by marijuana advocates. As cities across the state wrestle with this issue, as court decisions are handed down and amendments are made to either state or federal law, this issue may need to be revisited. For the time being, a ban on marijuana uses seems to be the most prudent action available to the City.

SUMMARY

The proposed new Section 23.08.100 of the RMC would place a ban on all marijuana land uses.

ATTACHMENT

(B)

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.

STAFF REPORT

TO: PLANNING COMMISSION
FILE NO.: Z2014-106

PREPARED BY: RICK SIMON
MEETING DATE: AUGUST 27, 2014

GENERAL INFORMATION:

APPLICANT: CITY OF RICHLAND Z2014-106

REQUEST: ZONING, SUBDIVISION & SHORELINE TEXT AMENDMENTS
IMPLEMENTING A HEARING EXAMINER SYSTEM

LOCATION: CITYWIDE

REASON FOR REQUEST:

The City Council has expressed a desire to implement a hearing examiner system of land use permit review. The proposed code amendments would make the changes necessary to implement such a system.

FINDINGS AND CONCLUSIONS

Staff has completed its review of the proposed amendments to the city's development regulations to implement a hearing examiner system of land use permit review and submits that:

1. State law, RCW 35A.63.170 authorizes the use of a hearing examiners to review land use permits;
2. City code requires the Planning Commission to hold a public hearing whenever amendments to the City's zoning and/or subdivision regulations are proposed. Public notice has been provided for this hearing by means of a legal ad in the Tri-City Herald;
3. The hearing examiner system of permit review is seen by many as reducing land liability concerns;
4. Implementing a hearing examiner system would provide the Planning Commission with increased opportunities to focus on long range planning matters, such as comprehensive planning amendments, development code amendments, and the review of master plans;

5. Other jurisdictions within the Tri-City region, including the city of Kennewick have adopted hearing examiner systems;
6. Based upon the above findings and conclusions, the adoption of the City's amendments to Titles 23, 24 and 26 of the Richland Municipal Code to implement a hearings examiner system of permit review is in the best interest of the community of Richland.

RECOMMENDATION

Staff recommends the Planning Commission concur with the findings and conclusions set forth in Staff Report (Z2014-105) and recommend to the City Council approval to the proposed amendments to Titles 23, 24 and 26 of the Richland Municipal Code – implementing a hearing examiner system.

ATTACHMENTS

- A. Supplemental Information
- B. Hearing Examiner Permit Review System Table
- C. Proposed Code Amendments

ATTACHMENT

(A)

SUPPLEMENTAL INFORMATION

EXISTING CODE

The current City code provides for the Planning Commission to serve as the hearing body for a wide variety of land use permits, including special use permits, planned unit developments, zone changes, site plan approvals, preliminary plats and shoreline permits.

PROPOSED AMENDMENTS

The proposed code amendments would replace the Planning Commission as the hearing body for most types of permits with a hearing examiner. References to the Planning Commission as a hearing body are spread throughout the code, so numerous sections of Titles 23 (zoning) 24 (subdivision) and 26 (shoreline management) are impacted. A complete copy of the proposed code amendments is attached.

While the hearing examiner would largely take over the review of permit applications, the Commission would still retain the responsibility of reviewing some types of permit applications, including building height exceptions in the Waterfront zoning district; alternative building design in the Central Business and Business Commerce districts and sidewalk use license applications. The Commission would retain all of its legislative functions including review of annexation requests, comprehensive plan amendments, code amendments, review of proposals to surplus city property, review of master plans and development agreements.

The proposed code amendments would also impact the Board of Adjustment slightly. The Board would still have responsibility to review zoning variance applications and some special use permit applications but would no longer review appeals of administrative decisions, as those actions would fall under the purview of the hearing examiner. The attached table provides a summary of which body would review each type of permit application that is identified in City code.

The City Council reviewed proposed code amendments to Chapter 2.16 (Planning Commission) and Title 19 (Development Regulation Administration) necessary to implement the hearing examiner system. They granted first reading to two ordinances that would implement those changes at their meeting on August 19th. Changes to those titles were not brought to the Commission as there is no mention in City code that amendments to those titles are subject to Planning Commission review. However, the

code does require the Planning Commission to hold a public hearing to consider amendments to zoning, subdivision and shoreline regulations.

The majority of the proposed amendments simply replace the term “Planning Commission” with the term “Hearing Examiner” but there are also substantive changes proposed for two code sections. RMC Section 24.13.040 addresses appeals of administrative determinations. The proposed amendments identify the process to be followed in the review of any such appeals. RMC Section 24.24.040 provides a mechanism for the City to authorize deviations from development standards pertaining to the subdivision of property. The proposed amendments would provide some clarification to both the process used in granting deviations and the criteria used in the evaluation of requests for deviations.

ANALYSIS

These proposed amendments that would implement a hearing examiner have been supported by City Council, as evidenced through their granting of first reading of ordinances amending titles 2 and 19 at their last meeting. Reasons for moving to a hearing examiner system of permit review that are often given are: that the use of hearing examiners tend to reduce cities’ liability in land use decisions; examiners bring a greater degree of predictability in land use decision making and free up the time of the Planning Commission to focus on the comprehensive plan and development regulations.

SUMMARY

The proposed amendments to Titles 23, 24 and 26 of the RMC would implement a hearing examiner system of land use permit review.

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ATTACHMENT

(B)

SUMMARY OF PROPOSED HEARING EXAMINER PERMIT REVIEW SYSTEM

Permit Type	Hearing Body	Decision Body	Appeal
Zoning Approvals			
Planned Unit Development	Hearing Examiner	City Council	Sup Court
Major Modification to Special Use Permits	Board of Adjust/ Hearing Examiner	Board of Adjust/ Hearing Examiner	City Council
Special Use Permit	Board of Adjust / Hearing Examiner	Board of Adjust/ Hearing Examiner	City Council
Site Plan Approvals	Hearing Examiner	Hearing Examiner	City Council
Building Height Exceptions	Planning Com	Planning Com	City Council
Alternative Design Standards	Planning Com	Planning Com	City Council
Joint Use Parking Reductions	Board of Adjust.	Board of Adjust	City Council
Schools (min size waivers)	Hearing Examiner	Hearing Examiner	Sup. Court
Area Wide Rezone	Planning Com	City Council*	Sup. Court
Site Specific Rezone	Hearing Examiner	City Council*	Sup. Court
Variance	Board of Adjust	Board of Adjust	Sup. Court
Subdivision Approvals			
Large Binding Site Plan	Hearing Examiner	Hearing Examiner	Sup. Court
Preliminary Plat	Hearing Examiner	City Council	Sup. Court
Final Plat	NA	City Council	Sup. Court
Major Plat Revision	Hearing Examiner	City Council	Sup Court
Extension of Preliminary Plat	None	Administrative	Hearing Examiner
Shoreline Permits			
Substantial Development Permit	Hearing Examiner	Hearing Examiner	Shoreline Board
Other Approvals – Legislative Items			
Development Agreements	Planning Com	City Council	Sup. Court
New Development Regulations	Planning Com	City Council	Sup. Court
Amendments to Existing Regulations	Planning Com	City Council	Sup. Court
Comprehensive Plan Amendment	Planning Com	City Council	GMA Board
Other Approvals			
Sidewalk Use Licenses	Planning Com	Planning Com	City Council
Appeals			
Appeals of Administrative Decisions – Zoning or Critical Areas Regulations	Hearing Examiner	Hearing Examiner	Sup. Court
Appeals of Administrative Decisions – Subdivision Regulations	Hearing Examiner	Hearing Examiner	Sup Court

*State law requires that Council make the final decision on all zone change applications.

ATTACHMENT
(C)

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.
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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 written findings of fact of the commission and the reasons for it's action; and the motion shall refer expressly to the specific language of the proposed amendment and any other graphics or materials intended by the commission to constitute the 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.

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.