

**GRANDVIEW CITY COUNCIL
COMMITTEE-OF-THE-WHOLE
MEETING AGENDA
TUESDAY, OCTOBER 11, 2016**



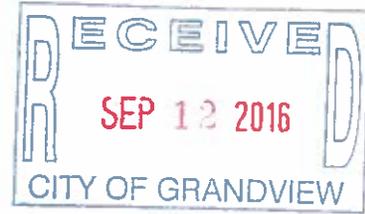
COMMITTEE-OF-THE-WHOLE MEETING – 6:00 PM

PAGE

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **CITIZEN PARTICIPATION** – The public may address the Council on items on the agenda.
4. **NEW BUSINESS**
 - A. Yakima Valley College Petition for Vacation of that portion of West Main Street 1-3
 - B. Growth Management Update: 4-12
 - Development Regulations (Attachment 1)
 - Critical Area Ordinance (Attachment 2)
 - Comprehensive Plan Updates (Attachment 3)
 - C. Resolution waiving the requirements of the State bid law to allow the purchase of pool slide from a sole source distributor 13-16
 - D. Professional Services Contract for Hearing Examiner Services 17-54
5. **OTHER BUSINESS**
6. **ADJOURNMENT**

September 6, 2016

City Council
City of Grandview
207 West Second Street
Grandview, WA 98930



RE: Petition for Vacation of that portion of West Main Street adjacent to property owned by YVC,
Parcel Nos. 230923-21403, 21405, 21406, 21418.

Dear City Council Members:

The purpose of this letter is to request that the Grandview City Council consider vacating the section of West Main Street adjacent to Yakima Valley College property that currently divides Parcel Nos: 230923-21403, 21405, 21406, 21418, that are owned by the State Board for Community and Technical Colleges, Yakima Valley College, map attached.

This portion of West Main Street falls within the college's Master Plan and if the Grandview City Council supports this vacation it will allow for the development of an entrance off of Wine Country Road and expansion of the Grandview campus thus allowing YVC to continue serving the educational needs of the Yakima Valley. The college's plan for this parcel calls for future construction of additional college buildings, landscaped entrance, new signage, and parking to the north of West Main Street as shown on the attached 2015 Master Plan Update. Vacation of the subject portion of West Main Street is necessary to allow the college to proceed with its plans for this parcel.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. Rich".

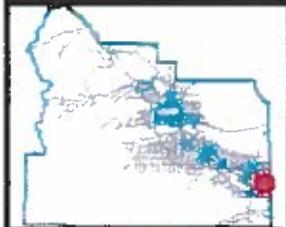
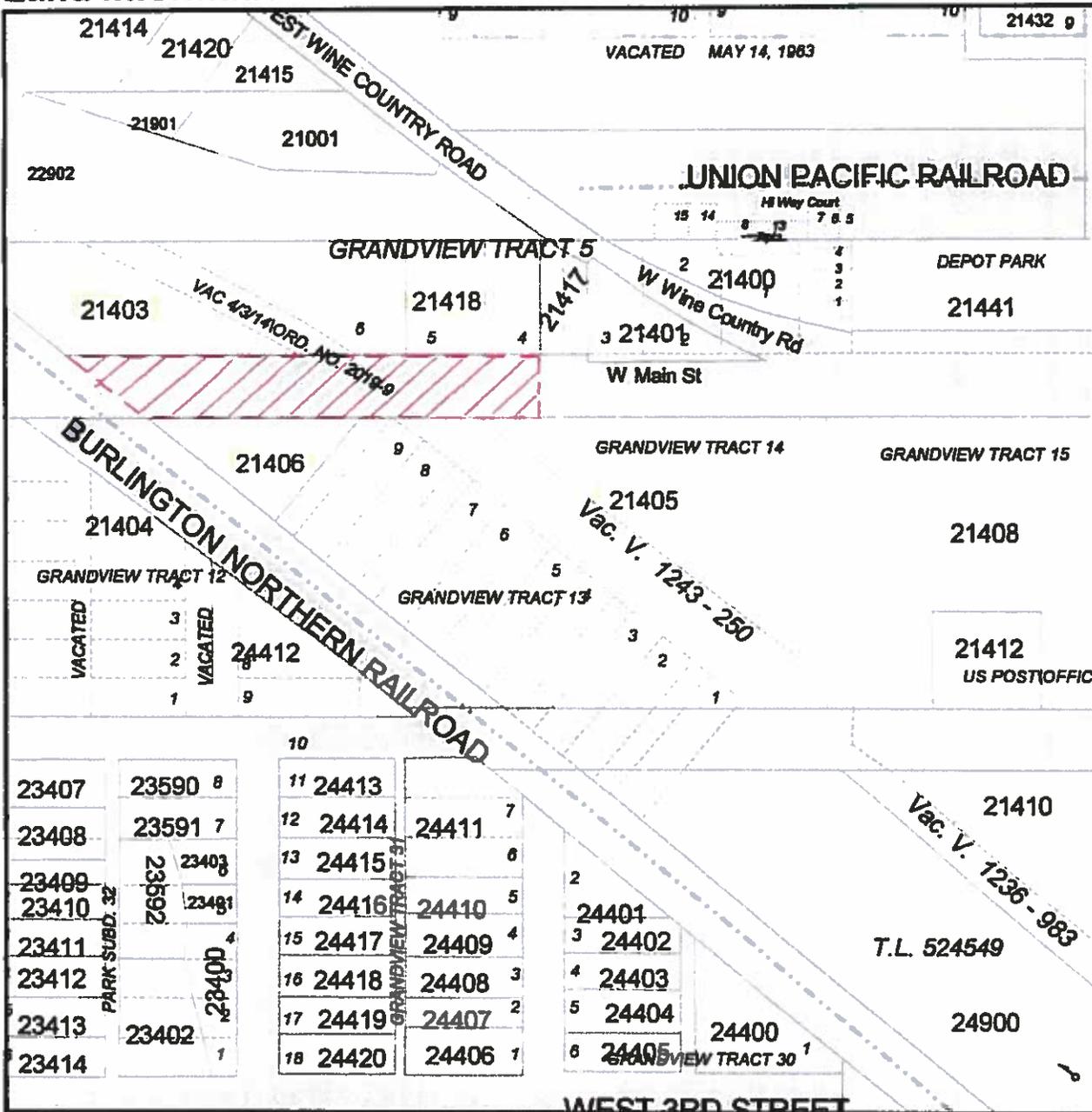
Teresa Holland Rich, Ph.D.
Vice President for Administrative Services

Enc.

Yakima County GIS - Washington
Land Information Portal

[\[Print Map\]](#)
[\[Close Map\]](#)

Yakimap.com



Map Center: Range:23 Township:9 Section:23

City Limits
 Sections

WWW.YAKIMAP.COM

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



One Inch = 200 Feet

Feet 100 200 300

MAP AND PARCEL DATA ARE BELIEVED TO BE ACCURATE, BUT ACCURACY IS NOT GUARANTEED; THIS IS NOT A LEGAL DOCUMENT AND SHOULD NOT BE SUBSTITUTED FOR A TITLE SEARCH, APPRAISAL, SURVEY, FLOODPLAIN OR ZONING VERIFICATION

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**CITY OF GRANDVIEW
 AGENDA ITEM HISTORY/COMMENTARY
 COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

AGENDA NO.: New Business 4 (B)

Growth Management Update: Development Regulations, Critical Area Ordinance, and Comprehensive Plan Updates

AGENDA DATE: October 11, 2016

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

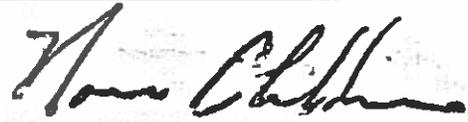
DEPARTMENT DIRECTOR REVIEW

Anita Palacios, City Clerk (Planning)



CITY ADMINISTRATOR

MAYOR

ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

The Growth Management Act (GMA) requires fully planning jurisdictions to review and update their comprehensive plans, development regulations, and critical areas ordinance (CAO), every eight years as established by RCW 36.70A.130(5)(c). Grandview's next GMA periodic update is due June 30, 2017. After this date, without a completed update, Grandview will be unable to access Washington State road and water/wastewater infrastructure grants and loans.

Staff and Planning Commission have reviewed proposed updates to the Comprehensive Plan, development regulations, and critical areas ordinance as part of the City's GMA Update, during public meetings held on May 27, 2015; June 24, 2015; August 26, 2015; October 28, 2015; January 27, 2016; and April 27, 2016.

All of the GMA update elements mutually complement one another. The Comprehensive Plan establishes the community's desirable character and physical pattern of growth and preservation during the next 20 years. The development regulations update provides land use regulations that implement the Comprehensive Plan; as part of the development regulations, the Critical Areas Ordinance provides environmental protection during development review processes.

At the August 31, 2016 Planning Commission meeting, the Commission adopted the following findings and conclusions:

1. The proposed revisions to the Grandview development regulations, Critical Areas Ordinance, and Comprehensive Plan are in keeping with the requirements of the GMA and the City of Grandview's policies,
2. The public use and interest will be served,
3. State Environmental Policy Act (SEPA) review, Washington State Department of Commerce 60-day Review, and RTPO certification of the Transportation Element have been completed,

and recommended approval of the development regulations, Critical Areas Ordinance, and Comprehensive Plan updates to the City Council as presented in order to complete the Growth Management Act periodic update.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

At the September 13, 2016 C.O.W. meeting, staff presented the Growth Management Update including the updated Development Regulations, Critical Area Ordinance, and Comprehensive Plan Updates for Council review. The C.O.W. was advised of the following next steps:

1. Senior Planner Shawn Conrad with the Yakima Valley Conference of Governments would attend the October 11, 2016 C.O.W. meeting to answer questions.
2. Schedule public hearing before the Council to receive comments on the Growth Management Update which includes the Development Regulations, Critical Area Ordinance, and Comprehensive Plan Updates following October 11th meeting.

No decisions shall be made by the City Council on the recommendations for amendment until after the initial sixty (60) day State comment and review period has expired. Once all Comprehensive Plan elements are recommended to the City Council by the Planning Commission, a public hearing before the City Council will be held on all elements of the Comprehensive Plan together to consider the cumulative effect of the entire Comprehensive Plan. Notice of the hearing and the nature of the proposed change shall be given by publication in the official newspaper of the City at least 10 days prior to the date of the hearing.

ACTION PROPOSED

Schedule public hearing before the Council to receive comments on the Growth Management Update which includes the Development Regulations, Critical Area Ordinance, and Comprehensive Plan Updates.

STAFF REPORT

TO: Committee of the Whole, City of Grandview
FROM: Shawn Conrad, Senior Planner, Yakima Valley Conference of Governments
DATE: October 11, 2016
SUBJECT: GMA update: Development regulations, Critical Areas Ordinance, and Comprehensive Plan updates

ACTION

REQUESTED: None; review and discussion only.

Background

The Growth Management Act (GMA) requires fully planning jurisdictions to review and update their comprehensive plans, development regulations, and critical areas ordinance (CAO), every eight years as established by RCW 36.70A.130(5)(c). Grandview's next GMA periodic update is due June 30, 2017. After this date, without a completed update, Grandview will be unable to access Washington State road and water/wastewater infrastructure grants and loans.

All of the GMA update elements mutually complement one another. The Comprehensive Plan establishes the community's desirable character and physical pattern of growth and preservation during the next 20 years. The development regulations update provides land use regulations that implement the Comprehensive Plan; as part of the development regulations, the Critical Areas Ordinance provides environmental protection during development review processes.

Staff and Planning Commission have reviewed proposed updates to the Comprehensive Plan, development regulations, and critical areas ordinance as part of the City's GMA Update, during public meetings held on May 27, 2015; June 24, 2015; August 26, 2015; October 28, 2015; January 27, 2016; April 27, 2016; and August 31, 2016.

SEPA Review

The City of Grandview distributed a Notice of Application and Determination of Non-Significance, the proposal, and a SEPA checklist on May 19, 2016, using the optional DNS process authorized by WAC 197-11-355. The comment period ended on June 2, 2016. One comment letter was received from the Department of Ecology regarding the Critical Areas Ordinance update. Ecology's comments related to definitions and the role of the Administrative Official. Revisions contained in the current Critical Areas Ordinance draft reflect these comments.

Department of Commerce 60-Day Review

The City of Grandview submitted the proposal and a Notice of Intent to Adopt Amendment to the Department of Commerce on May 19, 2016. Grandview received a letter from Commerce acknowledging receipt of the materials on May 19, 2016, with Material ID # 22424.

Grandview received a comment letter from Department of Commerce on July 13, 2016. Comments

related to the Comprehensive Plan update, specifically:

- The timeframe of the 20-year planning period used for Grandview's analysis associated with land and housing needs and their consistency with Yakima County.
- The timeframe of the six-year capital facilities plan.
- The timeframe of the capital facilities information presented from facility plans such as the 2015 Grandview Water System Plan and the 2009 General Sewer Plan.

After consideration of these comments, Grandview staff elected to retain the Comprehensive Plan as submitted to Department of Commerce.

Transportation Element Certification

YVCOG, as the lead agency for the Metropolitan Transportation Organization (MPO) and the Regional Transportation Planning Organization (RTPO) for Yakima County, is required to certify transportation elements under GMA to ensure that they are consistent with the Yakima Valley Metropolitan and Regional Transportation Plan 2012-2040 (MRTP) and GMA requirements.

After review of the City of Grandview's Transportation Element, YVCOG determined that it is consistent with the MRTP and the GMA, as follows:

- The plan was submitted for consideration on May 19, 2016 and reviewed by YVCOG Staff.
- The MPO/RTPO Technical Advisory Committee reviewed the completed Transportation Element Review Checklist on June 9, 2016 and recommended approval to the MPO/RTPO Policy Board.
- The Policy Board considered the recommendation of the Technical Advisory Committee on June 20, 2016 and approved the City of Grandview's Transportation Element.
- A formal Transportation Element Consistency Certification Report was signed by YVCOG's Executive Director on June 21, 2016.

Planning Commission Recommendation

After review of all of the above items at their August 31, 2016 regular meeting, Planning Commission voted to recommend approval of the GMA update, as presented.

Port District Revision

Subsequent to the Planning Commission recommendation, the Grandview Port District requested a revision to the Land Use Element of the Comprehensive Plan. The purpose of this revision was to provide for recognition of the Port's planning efforts in the Grandview Comprehensive Plan, which would allow the Port to apply for certain grants. The proposed revision is shown on Attachment 1.

Attachment 1

Land Available for Economic Development

In the City of Grandview, the Port of Grandview owns approximately 100 acres of property that is zoned and available for light industrial development. The Port of Grandview works to broaden and strengthen Grandview's economic base and is an important partner with the City of Grandview in economic development. The Port of Grandview's Strategic Goals and Objectives, adopted February 2016, are hereby incorporated by reference, as amended.

Within the City, there are currently 988.6 acres of undeveloped land, or 28% of Grandview's total land area. The term "undeveloped land" includes parcels designated by the County Assessor as "vacant," "residential land undeveloped," "current use agricultural," and "agricultural not current use." Land designated as undeveloped has the potential to develop to a residential, commercial, industrial, or public use within the 20-year planning period. Much of the undeveloped land occurs on the north side of the City, particularly the northwest corner near the north I-82 interchange; at the southeast corner of the City near the I-82 interchange; and at smaller, scattered sites in and around the central business district (see Figure 2-3, page 2-18).

Table 2-8 below summarizes the amount of undeveloped land that is potentially available for future development, in each future land use designation (see Figure 2-5, page 2-33). The future land use designation indicates how land is planned to be used in the future, as indicated by the Future Land Use Map, illustrated in Figure 2-6, page 2-34.

Table 2-8. Undeveloped Land in Future Land Use Designations in City of Grandview

Designation	# Parcels	Total Acres
Residential	158	272.2
Public	6	93.1
Commercial	26	84.7
Industrial	67	538.6
Undeveloped Land Total	188	988.6

Analysis of Physical Conditions

Natural constraints to development in Grandview are discussed in Chapter 1 – Physical Character Element. Most critical areas in and around Grandview such as steep slopes, other geologic hazards, wetlands, and fish and wildlife habitat conservation areas are small and isolated and do not limit further development in any particular direction outward from the City. The Physical Character Element includes maps and discussion of the critical areas identified within City limits and the unincorporated UGA, including wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

The main constraints to development take place in the form of physical barriers such as the Yakima River and its adjacent floodplain located approximately two miles south of the City; I-82, which passes through the northern portions of the City; and the railroads, which cross near the center of the City. These barriers must be crossed or bridged at a cost generally much higher than that for normal roadway construction.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

June 3, 2016

Cus Arteaga
City of Grandview
207 W. 2nd Street
Grandview, WA 98930

Re: City of Grandview GMA Periodic Update

Dear Mr. Arteaga:

Thank you for the opportunity to comment on the determination of nonsignificance for the City of Grandview GMA Periodic Update. We have reviewed the documents and have the following comments.

SHORELANDS/ENVIRONMENTAL ASSISTANCE

Thank you for extending your comment period so that we could review your draft CAO document (dated April 2016). Our review is focused primarily on wetland issues, as that is the expertise of our SEA program reviewer.

Grandview Comprehensive Plan Update Draft Physical Character Element (May 2016): Section III references Figure 1-7, which identifies Category 1, 2 and 3 wetlands inside City limits and Category 2 and 3 wetlands in the unincorporated UGA. It would be useful to include a reference to the original document/report in which the ratings of those wetlands was done. The figure was generated by the Yakima Valley Conference of Governments (March 2016). Did they also do the wetland ratings? (On page 1-21, there is a reference to the Grandview 2012 CAO, were the wetlands rated as a part of that CAO adoption?)

Draft Critical Area Ordinance (April 2016): This is one of the best draft City CAO documents that this reviewer has reviewed in a while. The draft ordinance language reflects “best available science” and will be protective of wetlands within your jurisdiction. There are a few minor changes that we would recommend you make in order to make your document consistent with updated citations or to clarify understanding:

Page 1-7 “Hydric Soil” definition: This definition contains reference to the previous delineation manual (Washington State Wetland Identification and Delineation Manual) that Ecology used. Elsewhere in your draft ordinance, you do cite WAC 173-22-035, which has been updated to reflect use of the currently approved federal manual and supplements, which became effective on March 14, 2011. We suggest that you change the reference in the “Hydric Soil” definition to simply refer to WAC 173-22-035.

Mr. Arteaga
June 3, 2016
Page 2

The Growth Management Act states that “wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380.” RCW 90.58.380 allows the Department of Ecology to adopt rules that incorporate changes to the manual. Therefore, the currently approved federal manual and supplements should be used for delineating wetlands in GMA jurisdiction. See:
<http://www.ecy.wa.gov/programs/sca/wetlands/delineation.html>.

On page 1-11 “wetland classes...” This definition is correct. However, **the term “wetland category” should be added to the definition section** as “wetland class” and “wetland category” are two different terms which are often interchanged incorrectly by people who are not familiar with wetland terminology. “Wetland category” could be defined as “a rating given to a wetland using the Washington State Wetland Rating System for Eastern Washington (October 2014 publication no. 14-06-030, or as revised.) The rating is used for purposes of comparing the relative degree of function and values between wetlands and is also used to help determine the size of buffers that are needed to protect those functions and values. See section 18.06.410”.

General Comment: Sections 18.06.190 through 220: The Administrative Official is given a lot of discretion to determine adequacy of reports and whether potential impacts to wetlands have been addressed. Ecology recommends that the Administrative Official be trained in how to recognize various types of wetland vegetation (herbaceous, scrub-shrub, and forested) and how that vegetation can seasonally change to a less recognizable state. Ecology recommends that the Administrative Official take Ecology’s Eastern Washington Rating System training as a good first step in acquiring wetland discernment skills. Also, Ecology will soon be releasing on-line tutorial module presentations on the process of how to delineate a wetland under the title of “Wetlands 101”. Each aspect of wetland delineation (soils, water and vegetation) will be presented in easy to understand, general terms.

If you have any questions about these comments, please contact **Catherine Reed** at (509) 575-2616. One of Ecology’s wetland staff’s highest priorities is to assist local governments with implementation of their wetland ordinances through report review, on-site delineation checks, etc. Please don’t hesitate to call Catherine for assistance regarding wetland issues.

Sincerely,



Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012
croscpacoordinator@ecy.wa.gov



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

July 13, 2016

Ms. Shawn Conrad, Planner
311 North 4th Street Suite 202
Yakima, Washington 98901

RE: Proposed amendment to the Grandview Comprehensive Plan for compliance with the GMA Periodic Update requirement.

Dear Ms. Conrad:

Thank you for sending Growth Management Services the proposed amendments to Grandview's comprehensive plan and development regulations that we received on May 19, 2016, and processed with Material ID No. 22424. Please consider the following comments as you prepare revisions to the document.

We especially like the following:

- The Plan includes excellent maps and simple, easy to understand tables throughout the document.
- The Physical Character Element includes an excellent description of Grandview's geology, climate and natural systems.
- Each chapter includes applicable County-wide Planning Policies for easy reference.
- The Land Use Element includes policies promoting physical activity (Policy 1.8).
- The Capital Facilities Element includes very thorough inventories and descriptions of facilities and services, including schools, fire and police.
- The Transportation Element has already been certified by the Yakima County Conference of Governments.
- Each element includes a paragraph detailing the relationship with other elements, addressing the GMA's internal consistency requirement (RCW 36.70A.070).

We have concerns about the following that you should address before you adopt your plan and development regulation amendments:

- We are concerned about the time period used for population projections and urban growth area (UGA) sizing decisions. UGA sizing decisions should be based on the projected population and employment growth, along with the broad range of needs and uses that will accompany the projected growth. Population projections cover a twenty-year period and begin on the statutory due date identified in RCW 36.70A.130. Jurisdictions may choose to adopt a projection that exceeds the twenty-year horizon, but UGA sizing decisions must be based on the need to accommodate twenty years of growth.¹ The GMA specifies that the 20-year time period commences immediately following the periodic review deadline, which for

¹ RCW 36.70A.110(2)

Yakima County jurisdictions is June 30, 2017 (RCW 36.70.130(3)(b)). Therefore, Grandview's population projection and analysis associated with land and housing needs must cover the time period from 2017 to 2037. Population projections must be coordinated and consistent with Yakima County.

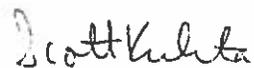
- The draft Capital Facilities Element (CFE) must include an inventory, forecast of future needs, locations of expanded or new facilities and a financing plan for required facilities. The financing plan must identify sources of public money and be within projected funding capacities (RCW 36.70A.070(3)). Facility needs must be analyzed consistently throughout the CFE, using the same time frame and population growth figures. Since Grandview's deadline to adopt its comprehensive plan is June 30, 2017, the 6-year financing plans for each facility type should include the years 2017-2023, with a 20-year analysis extending to 2037.
- The draft CFE adopts by reference a number of functional facility plans, such as the 2015 Grandview Water System Plan and the 2009 General Sewer Plan. Adopting functional plans by reference is fine and summary information is presented in the draft Comprehensive Plan as we recommend to jurisdictions. We recommend using the information in the functional plans as a starting point and updating the analysis using growth assumptions that are consistent with other elements of the comprehensive plan. Once the needs analysis is completed, the facilities required to accommodate growth, such as water storage, should be clearly identified, followed by a reasonable financing strategy.

We have some suggestions for strengthening your plan for your consideration either now, or future amendments:

- The Physical Character Element includes an analysis of water, wastewater, stormwater, and public services. We recommend moving this information to the Capital Facilities Element, keeping capital facilities and service analysis in one element.
- The Capital Facilities Element includes a general description of local, state and federal funding sources (Page 3-28), followed by a capital facilities plan with "potential funding sources". We recommend including a more detailed analysis of projected city revenues by category (WAC 365-196-415(c)(i)). We are happy to provide examples from other jurisdictions.

Congratulations to you and your staff for the good work these amendments represent. If you have any questions or concerns about our comments or any other growth management issues, please contact me at 509.795.6884. We extend our continued support to the City of Grandview in achieving the goals of growth management.

Sincerely,



Scott Kuhta
Senior Planner
Growth Management Services

SK:lw

cc: David Andersen, AICP, Acting Managing Director, Growth Management Services
Anita Palacios, City Clerk, Grandview
Tommy Carroll, Long Range Planning Manager, Yakima County

**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

Resolution waiving the requirements of the State bid law to allow the purchase of the municipal pool water slide from a sole source distributor

AGENDA NO.: New Business 4 (C)

AGENDA DATE: October 11, 2016

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

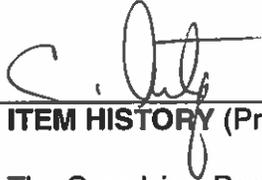
DEPARTMENT DIRECTOR REVIEW

Mike Carpenter, Parks & Recreation Director



CITY ADMINISTRATOR

MAYOR



ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

The Grandview Pool Committee has been working with the City of Grandview regarding improvements in phases at the municipal pool. Phase 2 includes a double flume water slide.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

HLA Engineering has submitted specifications of the commercial grade double flume water slide to the Washington State Department of Health. The Department of Health has approved this specific slide which has been determined as a sole source. Since this specific slide has been determined as a sole source, there are State provisions to waive the bidding requirements for the purchase of the slide.

ACTION PROPOSED

Move Resolution waiving the requirements of the State bid law to allow the purchase of the municipal pool water slide from a sole source distributor to a regular Council meeting agenda for consideration.

RCW 39.04.280

Competitive bidding requirements—Exemptions.

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

- (a) Purchases that are clearly and legitimately limited to a single source of supply;
- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

[1998 c 278 § 1.]

RESOLUTION NO. 2016-___

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,
WAIVING THE REQUIREMENTS OF THE STATE BID LAW TO ALLOW
THE PURCHASE OF THE MUNICIPAL POOL WATER SLIDE FROM
A SOLE SOURCE DISTRIBUTOR**

WHEREAS, the City is in the process of completing Phase 2 of the Grandview Municipal Pool Improvements; and,

WHEREAS, Phase 2 includes the installation of a new water slide feature; and,

WHEREAS, the City cannot install a slide without prior approval of the Washington State Department of Health; and,

WHEREAS, the Department of Health has approved the installation of Pool Slide Model 9113 and has not approved the installation of any other slide for the Grandview Municipal Pool Improvements; and,

WHEREAS, said water slide is available only through Natural Structures; and

WHEREAS, RCW 39.04.280(1)(a) provides an exception to the state bidding requirements when "the purchase is clearly and legitimately limited to a single source or supply."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, AS FOLLOWS:

The Parks and Recreation Department is authorized to purchase Pool Slide Model 9113 from Natural Structures for the Grandview Municipal Pool Improvements without going to competitive bid.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2016.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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Pool Slide Model 9113

Specifications

Description: Double 30" I.D. flume slide, one 90 ° curve, one straight.

Centerline Run: 23' 9" and 17' 11"

Entry Height: 6' 6"

Platform Size: 4' x 4'

Deck Space Requirement: 19' 0" x 20' 10" *

Features

- 30" inside diameter polyethylene flumes.
- Flume: color impregnated UV stabilized.
- Deck: Aqua-Plast coated textured aluminum surface.
- Stairs: 8" rise, 8" tread, 24" wide; Aqua-Plast coated textured aluminum surface.
- Multiple stair locations & configurations.
- Stainless steel base plates, hardware and anchor bolts.
- Designed with flexibility to allow for sloping pool decks.
- 14-20 gpm water flow (each flume) recommended; 8 to 40 gpm required.
- Splash down dimension 21' x 20'
- Minimum water depth: 3' (within 6" of water level)
- USA Made

Options

- Deluxe Series: Complete package is stainless steel polyester powder coated except the stair treads and deck which are textured Aqua-Plast coated aluminum.
- North Star Series: Mild steel with chemical resistant Aqua-Kote undercoating with polyester powder coat topcoat, except stair treads and deck which are textured Aqua-Plast coated aluminum.
- Hot dipped galvanized.
- Stairs: (a) 7" rise, 11" tread, 36" wide; textured aluminum; closed risers; (b) Inner handrails (if applicable).
- Gates: Locking gate to flume entrance.
- Flag and banner holders.
- Tower Roof: Polyethylene plastic roof.
- Factory installation or on-site technical assistance.
- Water pumps & covers



PO Box 270, Baker City, OR 97814 (541) 523-0224 (800) 252-8475 www.naturalstructures.com - info@naturalstructures.com

*Space requirements may vary with options chosen.

**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE Resolution authorizing the Mayor to sign a Professional Services Contract for Hearing Examiner Services with Gary M. Cuillier	AGENDA NO. New Business 4 (D) AGENDA DATE: October 11, 2016
ORIGINATING SOURCE	FUNDING CERTIFICATION (City Treasurer) (If applicable)

DEPARTMENT HEAD REVIEW
 Anita Palacios, City Clerk (Planning) 

CITY ADMINISTRATOR  **MAYOR** 

ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

Pursuant to Grandview Municipal Code Section 2.50, the City entered into a Professional Services Contract for Hearing Examiner Services with Gary M. Cuillier from January 15, 2008 through December 31, 2010. The contract with Mr. Cuillier was extended for an additional three year term from January 1, 2011 through December 31, 2014. On December 9, 2014, staff recommended an additional three year term, but due to a typo, the contract was only extended an additional year through December 31, 2015. Fortunately in 2016 to date, there has not been a need for hearing examiner services.

Included in the agenda packet is an e-mail from the City's Senior Risk Management Representative with Washington Cities Insurance Authority, along with two legal opinions from WCIA's legal counsel, strongly recommending the use of a hearing examiner for quasi-judicial land use matters.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

Mr. Cuillier has agreed to continuation of the contract at the same compensation and other provisions of the previous contract.

Staff recommends Council consider continuation of the contract for Hearing Examiner Services with Mr. Cuillier effective November 1, 2016 through December 31, 2019.

ACTION PROPOSED

Move Resolution authorizing the Mayor to sign a Professional Services Contract for Hearing Examiner Services with Gary M. Cuillier to a regular Council meeting for consideration.

Chapter 2.50 OFFICE OF THE HEARING EXAMINER¹

Sections:

- [2.50.010](#) Purpose.
- [2.50.020](#) Creation.
- [2.50.030](#) Appointment and terms.
- [2.50.040](#) Compensation.
- [2.50.050](#) Qualifications.
- [2.50.060](#) Conflict of interest.
- [2.50.070](#) Freedom from improper influence.
- [2.50.080](#) Duties.
- [2.50.090](#) Applications.
- [2.50.100](#) Fees.
- [2.50.110](#) Report by city department.
- [2.50.120](#) Open record public hearing.
- [2.50.130](#) Decision and recommendation.
- [2.50.140](#) Reconsideration.
- [2.50.150](#) Appeal of decision.
- [2.50.160](#) City council action.
- [2.50.170](#) City administrative staff is to be considered a person or party.

2.50.010 Purpose.

It is the purpose of this chapter:

A. With regard to land use matters to:

1. Provide a single, efficient, integrated land use regulatory hearing system;
2. Render land use regulatory decisions and recommendations to the city council;
3. Provide a greater degree of due process in land use regulatory hearings;
4. Separate the land use policy formulation and the land use policy administration processes.

B. With regard to other matters to:

1. Provide a single, efficient integrated system for hearing appeals of administrative decisions;
2. Provide a forum to hear other matters as established by city code. (Ord. 2007-14 § 1).

2.50.020 Creation.

The office of the hearing examiner is created. The hearing examiner shall interpret, review, and implement land use regulations, hear appeals from orders, recommendations, permits, decisions or determinations made by a city official as set forth in this chapter, and review and hear other matters

as provided for in this code and other ordinances. Throughout this chapter the masculine gender shall include the feminine. (Ord. 2007-14 § 1).

2.50.030 Appointment and terms.

The hearing examiner shall be appointed by and shall serve at the pleasure of the city council. (Ord. 2007-14 § 1).

2.50.040 Compensation.

The city shall contract with the hearing examiner for the performance of duties described in the code. The compensation paid the hearing examiner shall be that established in the contract. (Ord. 2007-14 § 1).

2.50.050 Qualifications.

The hearing examiner shall be appointed solely with regard to his qualifications for the duties of the office, which shall include, but not be limited to, any or all of the following:

- A. Appropriate educational experience, such as an urban planner or public administrator;
- B. Extensive experience in planning work in a responsible capacity; and
- C. Legal experience, particularly where the experience is in the area of land use management or administrative law. (Ord. 2007-14 § 1).

2.50.060 Conflict of interest.²

The hearing examiner shall not conduct or participate in any hearing or decision in which he has a direct or indirect personal interest which might exert such influence upon him sufficient to interfere with his decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. If the hearing examiner concludes that he has a conflict of interest with respect to a matter pending before him, then unless all parties agree in writing to have the matter heard by that hearing examiner, he shall disqualify himself from participating in the deliberations and the decision-making process with respect to the matter. If this occurs and there is not a pro tem hearing examiner already appointed, the mayor shall appoint a person to serve as the hearing examiner for that matter. (Ord. 2007-14 § 1).

2.50.070 Freedom from improper influence.

No city council member, city official or any other person shall attempt to interfere with, or improperly influence, the hearing examiner in the performance of his designated duties. (Ord. 2007-14 § 1).

2.50.080 Duties.

A. Applications. With respect to applications of matters submitted before him, the hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon these facts, which conclusions shall represent the final action on the application, unless appealed as hereinafter specified:

1. Conditional use permits pursuant to Chapter 17.86 GMC; and

2. Variances pursuant to GMC 16.08.020.

B. Appeals. With respect to appeals submitted before him, the hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the appeal, for the following appeals:

1. Appeals from development plan and zoning permit review decisions;
2. Appeals from administrative interpretation decisions;
3. Appeals from administrative design review decisions;
4. Appeals from short subdivision decisions;
5. Appeals from stop work orders or notices of violation issued by a city official in the administration or enforcement of the provisions of the Grandview Municipal Code;
6. Appeals of SEPA determinations;
7. All other hearings and appeals provided for in the Grandview Municipal Code whether designated as an appeal to the city council or hearings before any other commission or board. In the event there is a conflict between this section and any other code section regarding hearings or appeals, this chapter shall apply and the hearing examiner is hereby designated to hear all hearings and appeals provided for in this code.

C. Recommendations. The hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions based upon those facts, together with a recommendation to the city council, for the following:

1. Annexations;
2. Rezones;
3. Preliminary plats;
4. Planned unit developments; and
5. All other hearings and appeals provided for in the Grandview Municipal Code whether designated as an appeal to the city council or hearings before any other commission or board. In the event there is a conflict between this section and any other code section regarding hearings or appeals, this chapter shall apply and the hearing examiner is hereby designated to hear all hearings and appeals provided for in this code.

D. Public Hearings. The hearing examiner shall conduct public hearings when required under the provisions of the State Environmental Policy Act; conduct open record public hearings or closed-record appeals in accordance with the provisions of GMC Title 14, Administration of Development Regulations; and conduct such other hearings as the city council may from time to time deem appropriate.

E. References. All references in the city code and elsewhere to the board of adjustment and the board of appeals shall be construed as referring to the hearing examiner. The provisions of this chapter shall supersede any inconsistent or conflicting provisions elsewhere in this code as to the powers and duties of the planning commission.

F. Recommendation or Decision.

1. The hearing examiner's recommendation or decision may be to grant or deny the application, or the hearing examiner may recommend or require of the applicant such conditions, modifications and restrictions as the hearing examiner finds necessary to make the application compatible with its environment, with applicable state laws, and to carry out the objectives and goals of the comprehensive plan, the zoning code, the subdivision code, and other codes and ordinances of the city. Conditions, modifications and restrictions that may be imposed are, but are not limited to, additional setbacks, screenings in the form of landscaping and fencing, covenants, easements and dedications of additional road rights-of-way. Performance bonds or other financial assurances may be required to ensure compliance with conditions, modifications and restrictions.

2. In regard to applications for rezones, the hearing examiner's findings and conclusions shall be submitted to the city council, which shall have the final authority to act on such applications. The hearing by the hearing examiner shall constitute an open record predecision hearing before the final decision is made by the city council. (Ord. 2012-1 § 1; Ord. 2007-14 § 1).

2.50.090 Applications.

Applications for all matters to be heard by the hearing examiner shall be presented to the affected city department and to the city clerk. When it is found an application meets the applicable requirements, the application shall be accepted. The city clerk shall be responsible for assigning a date for the public hearing for each application. The date set for a public hearing shall not be more than 60 calendar days after the applicant has complied with all requirements and furnished all necessary data to the city clerk. Hearings on project permit applications are subject to the notice and hearing requirements set forth in GMC Title 14, Administration of Development Regulations. (Ord. 2007-14 § 1).

2.50.100 Fees.

All applications made or appeals filed under this chapter shall be accompanied by a fee of \$150.00. (Ord. 2007-14 § 1).

2.50.110 Report by city department.

For permit applications, the city clerk shall coordinate and assemble the comments and recommendations of city departments and governmental agencies having an interest in the application and shall prepare a report that includes the information described in GMC Title 14, Administration of Development Regulations. For all other matters, the appropriate city department shall prepare a report summarizing the factors involved and the department findings and supportive recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be

filed with the hearing examiner and copies shall be mailed to the applicant and shall be made available for use by any interested party for the cost of reproduction. (Ord. 2007-14 § 1).

2.50.120 Open record public hearing.

A. Before rendering a decision or recommendation on any application, the hearing examiner shall hold at least one open record public hearing thereon.

B. For permit applications, notice of the time and place of the public hearing shall be given as provided in GMC Title 14, Administration of Development Regulations. For all other applications, notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given at least 10 working days prior to such hearing.

C. The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths and preserve order. (Ord. 2007-14 § 1).

2.50.130 Decision and recommendation.

A. When the hearing examiner renders a decision or recommendation, the hearing examiner shall make and enter written findings from the record and conclusions therefrom which support such decision. The decision shall be rendered within 10 working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to on the record by the applicant and the hearing examiner. The copy of such decision, including findings and conclusions, shall be transmitted by first-class mail to the applicant and other parties of record in the case requesting the same. There shall be kept in the planning department a signed affidavit which shall attest that each mailing was sent in compliance with this provision.

B. In the case of applications requiring city council approval, the hearing examiner shall file a decision with the city council at the expiration of the period provided for reconsideration or, if reconsideration is accepted, within 10 working days after the decision on reconsideration. (Ord. 2007-14 § 1).

2.50.140 Reconsideration.

A party of record believing that a decision or recommendation of the hearing examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within five working days of the date the decision or recommendation is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as he or she deems proper. If a request for reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued. (Ord. 2007-14 § 1).

2.50.150 Appeal of decision.

A. Any party who feels aggrieved by the hearing examiner's decision may submit an appeal within 21 calendar days from the date the final decision of the hearing examiner is rendered to the Yakima County superior court.

B. No appeal may be made from a recommendation of the hearing examiner. (Ord. 2007-14 § 1).

2.50.160 City council action.

A. Any application requiring action by the city council shall be taken by the adoption of a motion, resolution or ordinance by the city council. When taking any such final action, the city council shall make and enter findings of fact from the record and conclusions therefrom which support its action. The city council may adopt all or portions of the findings and conclusions from the hearing examiner's recommendation.

B. In the case of an ordinance for rezone of property, the ordinance shall not be placed on the city council's agenda until all conditions, restrictions or modifications that may have been stipulated by the city council have been accomplished or provisions for compliance made to the satisfaction of the legal department.

C. The action of the city council, approving, modifying, or rejecting a recommendation of the hearing examiner, shall be final and conclusive. Appellants have 21 calendar days from the date of city council action to file an appeal with the superior court. (Ord. 2007-14 § 1).

2.50.170 City administrative staff is to be considered a person or party.

The city's administrative staff shall be considered a "person" and/or "party" and shall have the same rights as any other person or party to make requests for reconsideration to the hearing examiner or to appeal decisions of the hearing examiner to superior court. (Ord. 2007-14 § 1).

¹State law reference(s) – Land use hearing examiner, RCW 35A.63.170.

²State law reference(s) – Conflict of interest for planning agency, RCW 35A.63.020.

The Grandview Municipal Code is current through Ordinance 2016-19, passed September 27, 2016.

Disclaimer: The City Clerk's Office has the official version of the Grandview Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

RESOLUTION NO. 2014-65

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN A PROFESSIONAL SERVICES CONTRACT
FOR HEARING EXAMINER SERVICES WITH GARY M. CUILLIER**

WHEREAS, Gary M. Cuillier has been selected by the City to provide Hearing Examiner services; and,

WHEREAS, a Professional Services Contract has been prepared setting forth the services, duties and responsibilities of the Hearing Examiner,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON, as follows:

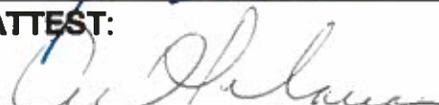
The Mayor is hereby authorized to sign a Professional Services Contract for Hearing Examiner services with Gary M. Cuillier, in the form as is attached hereto and incorporated herein by reference.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on December 9, 2014.

MAYOR



ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

**PROFESSIONAL SERVICES CONTRACT
CITY OF GRANDVIEW HEARING EXAMINER**

PARTIES:

The Parties to this contract are the **CITY OF GRANDVIEW**, 207 W. 2nd Street, Grandview, Washington 98930 (“City” herein), and **GARY M. CUILIER**, Attorney at Law, 314 N. 2nd Street, Yakima, Washington 98901 (“Cuillier”, “Hearing Examiner” herein).

RECITALS:

- 1) The City of Grandview has adopted a hearing examiner system for certain land use matters, at Ch. 2.50, GMC.
- 2) Cuillier has experience in land use matters, including as a hearing examiner for the City of Grandview and other municipalities, and has advised numerous municipalities concerning land use matters.

AGREEMENT:

1. Engagement of Hearing Examiner. The City hereby hires Cuillier, and Cuillier agrees to serve, as hearing examiner for the purposes set forth in the City’s various ordinances and land use regulations as may be determined by the City Council pursuant to Chapter 2.50 of the Grandview Municipal Code.

2. Character and Extent of Services. Cuillier shall perform the services of hearing examiner for the City of Grandview as required in the City’s ordinances, as well as other duties as may be assigned by the City Council from time to time.

3. Pro Tem Hearing Examiner. It is not contemplated that the City Council will have to appoint a pro term hearing examiner to serve in the event of absence or inability of the hearing examiner to act until such time as such a need arises.

4. Case Assignment. If a pro term hearing examiner is appointed in the future, the City Administrator, or his designee, shall assign cases.

5. Additional Duties. If a pro term hearing examiner is appointed in the future, the examiner shall coordinate with the pro term hearing examiner in order to insure consistency of analysis and efficient decision making. The examiner's duty to determine matters efficiently shall include the duty to issue written findings and conclusions for all matters coming before the examiner within ten (10) working days of the conclusion of the hearing on each matter unless a longer period is agreed to in writing by the applicant.

6. Liaison. The City Administrator, or his representative, shall serve as the City's liaison with the examiner.

7. Independent Contractor.

- a. Cuillier's services shall be furnished as an independent contractor and not as an agent, employee or servant of the City. Cuillier specifically has the right to direct and control his own activities in providing the agreed services in accordance with the specifications set out in this agreement.
- b. Cuillier acknowledges that the entire compensation set forth for this contract is set forth herein, and neither he nor his employees are entitled to any City benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to City employees.
- c. Cuillier shall have and maintain complete responsibility and control over his subcontractors, employees, agents and representatives.
- d. Cuillier shall pay for all taxes, fees, licenses, or payments required by federal, state or local laws which are now or may be enacted during the term of this contract.

8. Professional Fees. The examiner shall be paid by the City for professional services rendered under this contract at the rate of One Hundred Forty

Dollars (\$140) per hour. Unless requested or approved otherwise by the city administrator, the examiner will view the sites of any proposed land use actions on the day of the applicable hearings prior to the hearings. The City will pay for the examiner's round-trip travel time from the examiner's office in Yakima to hearings in the City – which will include the time to view the sites of the proposed land use actions prior to the hearings on the day of the hearings – at the rate of Seventy Five Dollars (\$75) per hour. The Examiner will not be reimbursed by the City for expenses such as training costs, specialized reference materials and planning-related memberships. The payment specified in this section shall be full compensation for services rendered, including al labor, materials, supplies, equipment and necessary incidentals.

9. Itemized Statements. By the 5th day of each month, the examiner will provide to the City an itemized statement for his services rendered during the previous month.

10. Payment Schedule. Payments will be made within twenty-five (25) days of the City's receipt of the examiner's statements.

11. Facilities to be Furnished by Hearing Examiner. The examiner shall furnish and maintain an office, equipment, library and clerical staff suitable and adequate for performing the services to be rendered pursuant to this contract. The City shall provide at its expense a hearing room, recording equipment and related supplies.

12. Ownership of Documents. The record developed before the examiner, including the examiner's decision or recommendation, shall be the property of the City. The examiner's work product, consisting of notes, research and preliminary drafts, shall be the property of the examiner.

13. Termination. If the examiner shall decide to resign prior to the termination date of this contract, he shall first give written notice not less than ninety (90) days prior to the date of his resignation. The City may terminate this contract for cause or without cause upon giving the examiner thirty (30) days written notice. For purposes of this paragraph, "cause" shall include, but not be

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limited to, a determination by the City Administrator that the examiner is not giving due consideration to proper procedures or is not conducting hearings in a prudent manner, giving due regard to the Appearance of Fairness Doctrine, laws regarding conflicts of interest, and/or other laws, procedures, and regulations dealing with the subject matter under consideration.

14. Indemnification. The City, to the extent of its coverage by the Washington Cities Insurance Authority for acts and omissions of public officials, shall indemnify, defend and hold the examiner harmless from all liability, loss or damage, including costs of defense that he may suffer as a result of claims, demands, actions, damages, costs or judgments which result from any negligent or other actions or omissions not excluded by said coverage.

15. Non-Assignment. This contract is personal to the examiner and is not assignable by the examiner to any other individual.

16. Amendment. This contract can only be amended by the written agreement of both parties.

17. Nondiscrimination. Cuillier, his assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any obligation hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

18. Interest of Public Officials. No member of the governing body of the City and no officer, employee or agent of the City shall have any personal financial interest, direct or indirect, in this contract. The examiner shall take appropriate steps to assure compliance.

19. Interest of Hearing Examiner. The examiner covenants that he presently has no interest and shall not acquire an interest, direct or indirect, in any property which is the subject of a proceeding before the examiner which would conflict in any manner or degree with the performance of his services hereunder.

20. Term. This contract shall commence January 1, 2015 and terminate December 31, 2015 unless prior to said date it is renewed for an additional period on terms agreeable to the City and the examiner.

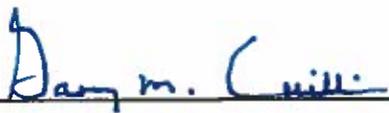
EXECUTED this 9TH day of December 2014.

CITY OF GRANDVIEW

HEARING EXAMINER

By: 

Norm Childress, Mayor



Gary M. Cuillier, Hearing Examiner

Date Signed: 12-4-14

APPROVED AS TO FORM:

By: 

Quinn N. Plant, City Attorney

Anita Palacios

From: Anita Palacios
Sent: Wednesday, September 28, 2016 3:04 PM
To: Anita Palacios
Subject: City of Grandview - Hearing Examiner
Attachments: Mike Walter's Hearing Examiner.pdf; Letter to Heather Kintzley re Hearing Examiners.pdf (Email.pdf)

From: Debbi Sellers [<mailto:DebbiS@wciapool.org>]
Sent: Wednesday, September 28, 2016 2:36 PM
To: Anita Palacios
Cc: Cus Arteaga
Subject: RE: City of Grandview - Hearing Examiner

Anita,
Attached are two separate documents outlining the benefits of using a hearing examiner. WCIA strongly recommends to all its members to use a hearing examiner instead of counsel or planning commissions for quasi-judicial land use matters. Please let me know if you have any questions.

*Debbi Sellers, RPLU, CPSI
Senior Risk Management Rep
Washington Cities Insurance Authority
206-687-7891 (Direct)
206-575-6046 (Office)*

This message is intended for the sole use of the addressee, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the addressee you are hereby notified that you may not use, copy, disclose, or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete this message.

WA

cities

Insurance Authority

P.O. Box 1165

Renton, WA 98057

SENT BY FAX

Phone: 425-277-7237

April 18, 2000

Fax: 425-277-7242

Jan Taylor Drummond
Mayor
Town of Woodway
23920 113th Place W
Woodway, WA 98020

RE: Legal Opinion
Hearing Examiner System

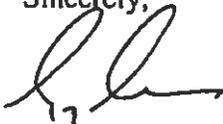
Dear Mayor Drummond:

In response to Lorraine Taylor's request enclosed is a legal opinion on the advantages of a Hearing Examiner system. The Authority strongly supports Mike C. Walter's recommendation to maintain its use of a professional Hearing Examiner. The Authority also supports the recommendation to expand the Hearing Examiner duties to authorize the Hearing Examiner to make final decisions appealable only to the Snohomish County Superior Court of those duties currently in Section 8.C of Ordinance No. 99-368.

The Town should be commended for establishing the office of the Hearing Examiner. To abolish the Hearing Examiner would be quite a step backward for the Town of Woodway. The advantages of a Hearing Examiner System, as outlined by Mr. Walter, far outweigh the disadvantages. Again, the Authority hopes the Town of Woodway continues its use of a Hearing Examiner.

Please call if you have any questions.

Sincerely,



Eric B. Larson
Assistant Executive Director

Enclosure

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KEATING, BUCKLIN & MCCORMACK, INC., P.S.

JOHN L. McCORMACK
MARK R. BUCKLIN
RANDAL W. EBBERSON
WILLIAM P. SCHOEL
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
DEBORAH D. BROOKINGS

ATTORNEYS AT LAW
800 FIFTH AVENUE, SUITE 4141
SEATTLE, WASHINGTON 98104-3175
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CHLOETHIEL W. DeWEESE
JAYNE L. FREEMAN
JAMES A. BURTON
STEPHANIE E. CROLL
MICHAEL D. TREGER
RICHARD B. JOLLEY
BRENDA L. BANNON

MARY ANN MCCONAUGHY
(OF COUNSEL)

ROBERT C. KEATING (RET.)

April 17, 2000

Mayor Jan Taylor Drummond
Town of Woodway
23920 113th Place West
Woodway, WA 98020

**RE: Legal Opinion
Advantages of Hearing Examiner System**

Dear Mayor Drummond:

The Town of Woodway's request for a legal opinion on the propriety and advantages of a hearing examiner system directed to Mr. Eric Larson at Washington Cities Insurance Authority (WCIA) has been forwarded to our office for a response. As discussed in more detail in this letter, from a legal, economic, political and practical perspective, we believe the use of a professional hearing examiner is unsurpassed and provides the greatest benefit to the Town and its citizens. For the reasons set forth below, we strongly urge the Town of Woodway to continue using the hearing examiner system it established one year ago, and to consider expanding its use to the fullest extent authorized by law for final, quasi-judicial decision making.

FACTS/BACKGROUND

We understand that approximately one year ago the Town of Woodway passed Ordinance no. 99-368, which created a hearing examiner system and dissolved the Town's Board of Adjustment. The Town's hearing examiner office was created pursuant to RCW Ch. 35A.63 and Ch. 58.17, and was empowered to interpret, review and implement land use regulations, and to perform other quasi-judicial functions as delegated by ordinance. The ordinance was passed on April 19, 1999, and the hearing examiner office became effective five days thereafter on April 25, 1999.

Pursuant to Ordinance No. 99-368, the Town's hearing examiner is authorized to render final decisions, appealable only to the Snohomish County Superior Court pursuant to a LUPA action (RCW Ch. 36.70C), on the following matters: (1) applications for variances from the zoning ordinance; (2) applications for special property uses; (3) appeals from administrative

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Mayor Jan Taylor Drummond

April 17, 2000

Page 2'

determinations or code interpretations; and (4) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the board of adjustment.

Under the Ordinance, the hearing examiner is authorized to render a recommendation only to the Town Council on the following matters: (1) applications for short subdivisions; (2) applications for preliminary plat approvals; (3) applications for plat modifications; (4) applications for plat alterations; (5) applications for quasi-judicial rezones; and (6) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the planning commission.

We understand that one (or more) members of the Town's Planning Commission would like to have the quasi-judicial functions now delegated to the Town's Hearing Examiner reinstated to the Planning Commission. You have requested a legal opinion on the propriety of this suggestion, and the advantages of continuing with the Town's hearing examiner system.

II. SUMMARY OF LEGAL OPINION

We believe the Town took a prudent step one year ago by establishing the office of hearing examiner and delegating to that individual quasi-judicial functions formerly given to the Planning Commission. By creating a hearing examiner system, the Town joined over 73 cities and 17 counties state-wide (as of February 1998) using a hearing examiner for land use decision-making. Those numbers grow every year. We strongly urge the Town to not only maintain the office of hearing examiner and preserve the duties assigned to the Hearing Examiner pursuant to Section 8 of Ordinance No. 99-368, but to expand those duties to authorize the Hearing Examiner to make final decisions appealable only to the Snohomish County Superior Court of those duties presently set forth in Section 8.C. of Ordinance No. 99-368, which are presently authorized as recommendations to the Town Council. We urge the Town to make full use of its hearing examiner, authorizing that individual to make final decisions on all authorized quasi-judicial applications. This will provide the greatest benefit to the citizens of Woodway, and will provide the highest level of risk management to the Town and to its elected officials.

III. LEGAL ANALYSIS

A. Nature of Hearing Examiner System.

A hearing examiner is an appointed officer who hears and adjudicates quasi-judicial matters in a manner similar to a trial court judge. By statute, local governments in Washington have the option of hiring or contracting with a hearing examiner to conduct quasi-judicial hearings, in place of local bodies such as city or town councils, planning commissions, boards of

adjustment, zoning boards, building code boards, design review boards and other elected or appointed adjudicative bodies.

RCW 35A.63.170 provides that a city or town council may adopt a hearing examiner system as an alternative to delegating to a planning commission the power and duty to hear and report on any proposal to amend a zoning ordinance where the amendment applied for is not of general applicability. The legislative body, pursuant to this statute, may also vest in the hearing examiner the power to hear and decide other land use matters such as:

1. Applications for conditional uses;
2. Applications for variances;
3. Applications for shoreline permits;
4. Any other class of applications for or pertaining to the development of land or land use;
5. Appeals of administrative decisions or determinations; and
6. Appeals of administrative decisions or determinations pursuant to SEPA, RCW Ch. 43.21.C.

In 1995, as part of the Regulatory Reform Act, the legislature amended the state subdivision statute to expressly authorize local government to use a hearing examiner system for adjudication of short plats and final decisions on preliminary plats. RCW 58.17.330 gives local government the option of having those decisions be in the form of a "recommendation" to the city or town council, or given the effect of an administrative decision appealable within a specified time limit to the city council, or a decision given the effect of a final decision of the city or town council.

Additionally, a hearing examiner may be appointed to serve as the building code board of appeals pursuant to the State Uniform Building Code RCW Ch. 19.27. Thus, a hearing examiner can be appointed to hear and decide appeals that arise under the Uniform Building Code.

B. Other Decisions Handled by Hearing Examiner.

In addition to making recommendations or final decisions on quasi-judicial land use matters, the city or town council may, by ordinance, authorize a hearing examiner to hear a variety of other contested matters, including:

- Civil infractions;
- Tax and licensing decisions and/or administrative appeals;
- Public nuisance complaints and/or appeals;
- Whistle blower or retaliation claims;
- Complaints of ethics violations and/or administrative appeals;
- The formation hearing and/or assessment role determinations for local improvements districts (LID) or utility local improvement districts (ULID);
- Employment decisions and personnel grievances and/or appeals; and
- Discrimination complaints under local personnel policies.

C. Advantages of Hearing Examiner System.

If properly implemented, a hearing examiner system has numerous advantages over traditional methods of making quasi-judicial land use decisions and over resolving administrative appeals from such decisions. We believe that the advantages of a properly implemented hearing examiner system so far outweigh any potential disadvantages that there is really no good reason for a city or town to not use a hearing examiner to the fullest extent authorized by law.

Some of the many advantages of a hearing examiner system for land use decision-making include:

- **More professional decisions.** Hearing examiners are specially trained – usually lawyers and/or land use professionals – and, as a result, conduct more professional and timely hearings which help ensure procedural fairness and avoid legal pitfalls. Hearing examiners have a high level of expertise and specialization.

- **No political influence or pressure.** Most legal claims over quasi-judicial land use decisions have their genesis in political influence and political "agendas." Such political influence in the context of quasi-judicial land use decision making is not permitted, and can result in invalidation of the decision and possible personal liability against the decision maker. It is frequently difficult for elected local government officials to eliminate political considerations and influence from their quasi-judicial decision making; for this reason, a professional hearing examiner should be used to eliminate this influence and substantial liability risk.
- **Hearing examiners are technically adept, with specialized land use knowledge.** Most professional hearing examiners have broad knowledge of physical land development constraints, technical issues and some esoteric aspects of a land use law and land development. With these specialized technical skills, they typically make more thoughtful and legally sustainable decisions.
- **More efficient process and more timely decisions.** Professional hearing examiners, because of their knowledge and specialization, conduct hearings in a more efficient and timely manner. Hearings tend to be less emotional and better organized. As a result, the hearing process is faster, more expedient and decisions are made more timely, thus substantially reducing risk of delayed damage lawsuits and claims of undue delay in the decision making process.
- **More cost effective decision making.** While there are costs in hiring a hearing examiner, overall, the use of a hearing examiner is generally more cost-effective to cities and towns through a more efficient adjudicative process, through substantial reduction in appeals of decisions, and through a substantial reduction in civil judicial challenges to the decisions. A professional hearing examiner can frequently resolve land use matters much more timely and efficiently and thus handle more applications in a given period of time with a substantial reduction in requests for reconsideration, administrative appeal or civil litigation. Moreover, many of the direct costs of a hearing examiner can be passed on to individual permit applicants.
- **Improved compliance with legal requirements and due process.** Because hearing examiners have special expertise in legal procedural requirements, conflict of interest issues and appearance of fairness issues, they better ensure compliance with statutory hearing requirements and, most importantly, constitutional due process requirements. Better-run hearings, with decisions based on logic and application of the facts to the law, rather than politics or

emotion, help ensure compliance with state Regulatory Reform Act requirements and federal and state constitutional guarantees of due process and equal protection.

- **Substantial reduction in potential legal claims against the city/town.** There is no doubt that the use of a professional hearing examiner for final quasi-judicial decision making results in a substantial reduction in legal challenges and claims for monetary damages against the city or town. Because of improved hearing procedures, a better record, better compliance with regulatory reform and due process requirements, as well as more consistent and documented decisions, the risk of legal challenges or claims for damages is substantially reduced. For example, in our office's experience, the majority of claims for damages against cities and towns over quasi-judicial land use decisions arise out of decision making by city or town councils, planning commissions or boards of adjustment. Conversely, in our experience, it is rare to have a legal challenge or claim for damages asserted against a city or town for a quasi-judicial land use decision by a professional hearing examiner. Those few cases that do arise against a hearing examiner are, for the most part, substantially more defensible than those of elected officials or citizen boards or commissions.
- **Eliminates potential legal claims against elected officials/citizen decision-makers personally.** When a professional hearing examiner is used for making final decisions on quasi-judicial land use decisions, and elected officials and citizen decision makers are removed from the final decision-making process, legal claims against the elected officials or citizen decision-makers are eliminated. As a general rule, there is no basis for legal claims against a city or town council member, planning commission member, board member or other citizen decision-maker personally when those individuals do not render final quasi-judicial decisions. Any potential personal liability is generally only against the hearing examiner in those instances where the hearing examiner renders the final quasi-judicial decision.
- **A hearing examiner helps ensure predictability and consistency.** For the reasons above, the use of a professional hearing examiner helps ensure procedural fairness and consistent decisions. Because professional hearing examiners are removed from political pressure and influence, they tend to make more consistent and defensible decisions, thus avoiding constitutional claims of violation of equal protection.

- **Instills public confidence in decision-making process.** Professional hearing examiners, because of their knowledge, expertise and efficient administration of hearings generally instills public confidence in the quasi-judicial decision making process. Rather than watching or participating in hearings which are based on emotion, argument and political agenda, citizens watching or participating in a hearing examiner hearing see a more professionally run hearing based on logic and common sense and rules of order. The process makes the city or town (and its elected officials) appear much more professional and organized, thus instilling confidence in the decisions being made.
- **Improved permit review and integration requirements under the Regulatory Reform Act.** The use of a professional hearing examiner system is authorized by various amendments to state law under the 1995 Regulatory Reform Act, RCW Ch. 36.70B. The use of a hearing examiner helps satisfy these state law requirements for both streamlining the regulatory process, administrative review and appeals, and in consolidating environmental review with substantive permit decision-making. A hearing examiner is an effective method of consolidating and coordinating multiple review processes, and can eliminate the need for use of other boards or commissions for adjudication of quasi-judicial permits and approvals.
- **Frees up council/planning commission time for planning and law-making functions.** Conducting public hearings and making quasi-judicial decisions is laborious, time-consuming and sometimes frustrating to elected officials and citizen bodies. City or town council members and citizen advisory bodies can free themselves from the time-drain and frustration of quasi-judicial decision making by delegating those responsibilities to a professional hearing examiner. This, then, frees up council and/or planning commission time for important policy-making, long-term planning and law making functions which, typically, are their primary duties and responsibilities. The use of a hearing examiner can be a substantial time-savings for routine decisions and for complex land use decision-making which requires review of substantial documents, lengthy formal hearings, citizen participation and education into the nuances of land use decision-making. A professional hearing examiner is better equipped to handle all of these matters.
- **Segregates and delineates quasi-judicial functions from legislative functions.** A high percentage of legal claims and damages lawsuits from land use decision-making are precipitated by confusion and conflict between the dual roles of city

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or town council members: legislative (law-making) and quasi-judicial (adjudicating contested claims) functions. Using a professional hearing examiner for quasi-judicial hearings clearly separates and delineates the quasi-judicial functions (which the hearing examiner handles) from the legislative, visioning and administrative functions (required of council members). From this segregation, council members can concentrate on directly responding to citizen concerns and desires, and on "visioning" for the future through various legislative actions, without worrying about those matters improperly influencing quasi-judicial decisions (which must not include those legislative, planning or visioning matters).

- **Opportunity for feedback and correction of code ambiguities and conflicts.** Because professional hearing examiners are skilled in the law and in understanding, interpreting and applying nuances of municipal codes, land use regulations and general legal principals, they are in a unique and useful position to identify potential problem areas in municipal codes or development regulations, and to recommend that those be corrected legislatively. A professional hearing examiner has familiarity with local comprehensive plans, zoning standards and development regulations of the particular jurisdiction, as well as other jurisdictions, and can offer unique insight into potential problem areas. In this respect, a professional hearing examiner can offer feedback to the elected officials to correct comprehensive plans, zoning regulations and general development regulations to avoid vague or unconstitutional provisions, and to identify and correct conflicts within the code or between the code and comprehensive plan and/or other development regulations. A professional hearing examiner can identify where plans, regulations and development standards are weak, inconsistent or unenforceable, providing feedback for continuous improvement and redevelopment.
- **Good customer service.** Finally, the use of a professional hearing examiner is simply "good business", and provides the highest level of good customer service. In dealing with a professional hearing examiner, applicants for quasi-judicial land use approvals feel they are getting treated more fairly and equitably, and receive more consistent and timely "service" through an improved process, a more professional environment, and a more consistent and thoughtful decision. Similarly, the citizenry, due to a more professional and well-run process, sees that its needs and interests are being more fairly and objectively incorporated into the final decision.

D. Disadvantages of Hearing Examiner System.

The advantages of a professional properly administered hearing examiner system for adjudication of land use matters overwhelmingly outweighs the few disadvantages – most of which can be mitigated. There are essentially only three potential disadvantages to a hearing examiner system, and they are:

- **Cost to city or town for hearing examiner and staff.** While there are additional costs in the hiring and use of a professional hearing examiner and, where necessary, support staff, these increased costs can be mitigated in several ways. First, all or part of the direct costs can be passed on to applicants through either application fees or permit processing fees, properly adopted through ordinance. Second, cities and towns can (and frequently do) "share" a professional hearing examiner so that similar quasi-judicial hearings are "consolidated", and the time and costs are shared. Third, alternatives such as use of a personal service contract can help reduce the cost of a hearing examiner. Finally, any marginal increase in cost for the use of a professional hearing examiner is typically outweighed by the significant potential cost of more frequent administrative appeals and expensive civil lawsuits. The cost of defending alone just one large damages lawsuit against a city or town arising out of a quasi-judicial decision by elected officials or a citizen body can easily exceed annual cost of a professional hearing examiner, which would more-likely-than not have prevented the error which precipitated the lawsuit.
- **Increased potential costs to parties.** While there may be an increase in costs to applicants due to the use of a professional hearing examiner, typically those costs are *de minimus* in relation to overall application costs and to the value to the applicant for a more professional and timely decision. Indeed, any additional costs to the applicant are typically outweighed by the probable time savings and more efficient decision-making process. The moderately increased cost and formality of hearing examiner system eliminates the "hidden" costs of delay, inefficiency, multiple hearings, requests for review, administrative appeals and expensive legal action.
- **Lack of involvement by elected officials/citizen boards in decision-making process.** While some believe that the use of a professional hearing examiner to eliminate the decision-making and involvement in quasi-judicial decisions by elected officials and citizen bodies is a "disadvantage", in fact this result is in reality a substantial advantage to a city or town. One of the key purposes of

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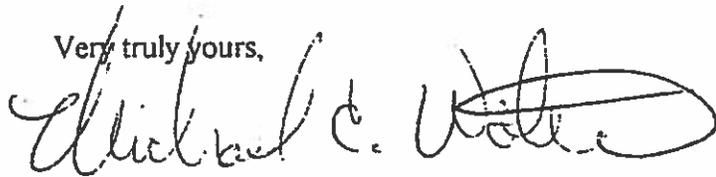
using a professional hearing examiner is to remove elected officials and citizen board members from quasi-judicial decision-making to avoid the political influence, the emotion and the potential prejudice which frequently undermines land use decisions by those individuals or those entities. Moreover, elected officials can maintain their "accountability" to voters by more properly concentrating on their role as legislators to achieve long term planning goals and "visioning" for the community, rather than trying to establish their "accountability" in the quasi-judicial decision making process (where it does not belong).

IV. CONCLUSION

For the foregoing reasons, we strongly urge the Town of Woodway to maintain its use of a professional hearing examiner for quasi-judicial land use decision making. And, in the interest of good legal risk management, economic efficiency and customer service, we also recommend that the Town consider modifying the duties of its hearing examiner, as established in Section 8.C of Ordinance No. 99-368, to make the decision of the hearing examiner on those identified matters a "final" and binding decision, appealable only to the Snohomish County Superior Court pursuant to a LUPA action under RCW Ch. 36.70C. We encourage the Town to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions final decisions, appealable only to Court.

We hope this information is of value to the Town of Woodway. If we can provide any additional information on this topic, please let us know.

Very truly yours,



Michael C. Walter

MCW/ks

cc: Lorraine Taylor, Clerk-Treasurer
Lewis Leigh, Executive Director, WCIA
Eric B. Larson, Assistant Direct, WCIA

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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 ... [.]

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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

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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

Anita Palacios

From: Tcbgc@aol.com
Sent: Monday, September 26, 2016 11:51 AM
To: Anita Palacios
Subject: Re: Professional Services Contract for HE Services - City of Gr.-- Reply

Anita -- I would be willing to sign a new Hearing Examiner contract with the same compensation and other provisions as are contained in the contract which expired on December 31, 2015. It was a two-year contract, but any term would be acceptable. If the contract is not on City Attorney Quinn Plant's computer, please let me know and I will have the contract prepared. Thank you. -- Gary

In a message dated 9/26/2016 8:24:53 A.M. Pacific Daylight Time, anitap@grandview.wa.us writes:

Thank you for your phone message. I would like to present a new contract to the Council for consideration. Could you please revise the current contract with new term dates and e-mail me a copy to present? Would you also send a letter identifying any contract language changes and also identify that the fee would remain the same as the current contract?

Thanks,

Anita G. Palacios, MMC
City Clerk/Human Resource
City of Grandview
207 West Second Street
Grandview, WA 98930
PH: (509) 882-9208
FAX: (509) 882-3099
anitap@grandview.wa.us
www.grandview.wa.us

**PROFESSIONAL SERVICES CONTRACT
CITY OF GRANDVIEW HEARING EXAMINER**

PARTIES:

The Parties to this contract are the **CITY OF GRANDVIEW**, 207 W. 2nd Street, Grandview, Washington 98930 ("City" herein), and **GARY M. CUILLIER**, Attorney at Law, 314 N. 2nd Street, Yakima, Washington 98901 ("Cuillier", "Hearing Examiner" herein).

RECITALS:

- 1) The City of Grandview has adopted a hearing examiner system for certain land use matters, at Ch. 2.50, GMC.
- 2) Cuillier has experience in land use matters, including as a hearing examiner for the City of Grandview and other municipalities, and has advised numerous municipalities concerning land use matters.

AGREEMENT:

1. Engagement of Hearing Examiner. The City hereby hires Cuillier, and Cuillier agrees to serve, as hearing examiner for the purposes set forth in the City's various ordinances and land use regulations as may be determined by the City Council pursuant to Chapter 2.50 of the Grandview Municipal Code.

2. Character and Extent of Services. Cuillier shall perform the services of hearing examiner for the City of Grandview as required in the City's ordinances, as well as other duties as may be assigned by the City Council from time to time.

3. Pro Tem Hearing Examiner. It is not contemplated that the City Council will have to appoint a pro term hearing examiner to serve in the event of absence or inability of the hearing examiner to act until such time as such a need arises.

4. Case Assignment. If a pro term hearing examiner is appointed in the future, the City Administrator, or his designee, shall assign cases.

5. Additional Duties. If a pro term hearing examiner is appointed in the future, the examiner shall coordinate with the pro term hearing examiner in order to insure consistency of analysis and efficient decision making. The examiner's duty to determine matters efficiently shall include the duty to issue written findings and conclusions for all matters coming before the examiner within ten (10) working days of the conclusion of the hearing on each matter unless a longer period is agreed to in writing by the applicant.

6. Liaison. The City Administrator, or his representative, shall serve as the City's liaison with the examiner.

7. Independent Contractor.

- a. Cuillier's services shall be furnished as an independent contractor and not as an agent, employee or servant of the City. Cuillier specifically has the right to direct and control his own activities in providing the agreed services in accordance with the specifications set out in this agreement.
- b. Cuiller acknowledges that the entire compensation set forth for this contract is set forth herein, and neither he nor his employees are entitled to any City benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to City employees.
- c. Cuillier shall have and maintain complete responsibility and control over his subcontractors, employees, agents and representatives.
- d. Cuillier shall pay for all taxes, fees, licenses, or payments required by federal, state or local laws which are now or may be enacted during the term of this contract.

8. Professional Fees. The examiner shall be paid by the City for professional services rendered under this contract at the rate of One Hundred Forty Dollars (\$140) per hour. Unless requested or approved otherwise by the city administrator, the examiner will view the sites of any proposed land use actions on the day of the applicable hearings prior to the hearings. The City will pay for the examiner's round-trip travel time from the examiner's office in Yakima to hearings in the City – which will include the time to view the sites of the proposed land use actions prior to the hearings on the day of the hearings – at the rate of Seventy Five Dollars (\$75) per hour. The Examiner will not be reimbursed by the City for expenses such as training costs, specialized reference materials and planning-related memberships. The payment specified in this section shall be full compensation for services rendered, including all labor, materials, supplies, equipment and necessary incidentals.

9. Itemized Statements. By the 5th day of each month, the examiner will provide to the City an itemized statement for his services rendered during the previous month.

10. Payment Schedule. Payments will be made within twenty-five (25) days of the City's receipt of the examiner's statements.

11. Facilities to be Furnished by Hearing Examiner. The examiner shall furnish and maintain an office, equipment, library and clerical staff suitable and adequate for performing the services to be rendered pursuant to this contract. The City shall provide at its expense a hearing room, recording equipment and related supplies.

12. Ownership of Documents. The record developed before the examiner, including the examiner's decision or recommendation, shall be the property of the City.

The examiner's work product, consisting of notes, research and preliminary drafts, shall be the property of the examiner.

13. Termination. If the examiner shall decide to resign prior to the termination date of this contract, he shall first give written notice not less than ninety (90) days prior to the date of his resignation. The City may terminate this contract for cause or without cause upon giving the examiner thirty (30) days written notice. For purposes of this paragraph, "cause" shall include, but not be limited to, a determination by the City Administrator that the examiner is not giving due consideration to proper procedures or is not conducting hearings in a prudent manner, giving due regard to the Appearance of Fairness Doctrine, laws regarding conflicts of interest, and/or other laws, procedures, and regulations dealing with the subject matter under consideration.

14. Indemnification. The City, to the extent of its coverage by the Washington Cities Insurance Authority for acts and omissions of public officials, shall indemnify, defend and hold the examiner harmless from all liability, loss or damage, including costs of defense that he may suffer as a result of claims, demands, actions, damages, costs or judgments which result from any negligent or other actions or omissions not excluded by said coverage.

15. Non-Assignment. This contract is personal to the examiner and is not assignable by the examiner to any other individual.

16. Amendment. This contract can only be amended by the written agreement of both parties.

17. Nondiscrimination. Cuillier, his assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any obligation hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

18. Interest of Public Officials. No member of the governing body of the City and no officer, employee or agent of the City shall have any personal financial interest, direct or indirect, in this contract. The examiner shall take appropriate steps to assure compliance.

19. Interest of Hearing Examiner. The examiner covenants that he presently has no interest and shall not acquire an interest, direct or indirect, in any property which is the subject of a proceeding before the examiner which would conflict in any manner or degree with the performance of his services hereunder.

20. Term. This contract shall commence November 1, 2016 and terminate December 31, 2019 unless prior to said date it is renewed for an additional period on terms agreeable to the City and the examiner.

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EXECUTED this _____ day of _____, 2016.

CITY OF GRANDVIEW

By: _____
Norm Childress, Mayor

HEARING EXAMINER

Gary M. Cuillier
Gary M. Cuillier, Hearing Examiner
Date Signed: October 3, 2016

APPROVED AS TO FORM:

By: _____
Quinn N. Plant, City Attorney

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