Steve Friddle

From: Frederick Adair [mjadair34@gmail.com]
Sent: Sunday, June 03, 2012 11:31 PM
To: Steve Friddle
Subject: Comprehensive Plan Amendment - County Homeless Encampment

Dear Steve,

I have a conflict with the time of the meeting on the subject.

I am surprised to see another obstacle to moving ahead with the Camp Quixote Permanent Encampment. Be that as it may, let me strongly support the Comp Plan Amendments to authorize a permanent homeless encampment.

I have recently encountered studies showing that getting a person successfully housed before working on that person's problem(s) is both more economical in the long run and more humane. The temporary Quixote encampments, though less than ideal, have substantiated this concept. There has been a pleasantly high "graduation rate" from the encampment to employment and permanent housing. The planned permanent encampment, as it has been presented to the City Council, can only further improve the situation.

Best wishes to you,

Fred Adair

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June 1, 2012

TRANSMITTED VIA ELECTRONIC MAIL
tmorrill@ci.olympia.wa.us

Tom Morrill, City Attorney
City of Olympia
Olympia City Hall
601 – 4th Avenue E
Olympia, Washington 98501

Re: Proposed Comprehensive Plan Amendments – Permanent Homeless Encampment
Request to Strike Planning Commission Public Hearing – June 4, 2012

Dear Mr. Morrill:

I represent the Industrial Zoning Preservation Association, an association comprised of property owners within the Mottman Industrial Park. I also represent individual Mottman Industrial Park property owners John Peranzi, Vallie Jo Fry, and Tony and Isobel Cairone.

Mr. Peranzi, Ms. Fry, and the Cairones were the named Petitioners in Western Washington Growth Management Hearings Board ("WWGMHB") Case No. 11-2-0011, which successfully challenged the City of Olympia's adoption of text amendments to its development regulations authorizing a County permanent homeless encampment in the Light Industrial zone. The WWGMHB specifically found that the text amendments were inconsistent with the City's comprehensive plan policies LU. 18.4 and 18.5 and directed the City to bring "its development regulations into compliance with the Growth Management Act...within 120 days." (Final Decision and Order at p. 30). According to the City staff report for the June 4, 2012 Planning Commission public hearing, the above-referenced amendments are designed to bring the City into compliance with the WWGMHB order.

I am writing on behalf of these clients in advance of the scheduled public hearing to urge that the City withdraw the proposed amendments and strike the public hearing. For the reasons set forth below, adopting these amendments outside the annual cycle is facially non-compliant with the plain language of the Growth Management Act ("GMA") (RCW 36.70A). Even if it were lawful, the City's process for proposing the amendments leading up to the single, short-noticed public hearing has not and does not satisfy public participation requirements.

A. Consideration and Adoption of the Proposed Amendments Outside the Annual Amendment Cycle is Unlawful

As a preliminary matter, I do not believe that the City can lawfully consider and adopt the proposed amendments outside of the annual cycle for consideration of comprehensive plan amendments.

The City's amendment of its comprehensive plan "shall conform" to GMA requirements. RCW 36.70A.130((d). Under the GMA, proposed amendments may be considered "no more frequently than once per year," unless a specified exception applies. RCW 36.70A.130(2)(a). The specified exceptions to concurrent annual consideration of comprehensive plan amendments include "to resolve an appeal of a **comprehensive plan** filed with the growth management hearings board … ." RCW 36.70A.130(2)(b) (emphasis added).

My clients' Petition for Review was limited to the text amendments to City development regulations authorizing permanent County homeless encampments in the Light Industrial zone. The legal basis for my clients' challenge, and in turn the WWGMHB decision, was that the amended development regulations were inconsistent with specific elements of the City's comprehensive plan, and thus non-compliant with the GMA. RCW 36.70A.130(1)(d). My clients' Petition for Review did not appeal a single provision of the City's comprehensive plan. Indeed, Land Use Policies 18.4 and 18.5, which the City proposes to amend, were adopted in 1994 and are well beyond challenge as a matter of law. RCW 36.70A.290(2).

The plain language of the GMA exception to concurrent annual consideration of comprehensive plan amendments applies only to resolve an appeal "of a comprehensive plan" to the Growth Management Hearings Board. RCW 36.70A.130(2)(b). The statutory exception includes no language applying the exception to an appeal "of a development regulation," as is the case here. Had the Legislature meant to include "of a development regulation" in this exception to provide for off-cycle comprehensive plan amendments in such cases, it could certainly have done so. It did not.

The primary goal of statutory construction is to carry out the legislative intent. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). If a statute is plain and unambiguous, then its meaning must be primarily derived from the language itself. *Dep't of Transp. v. State Employees' Ins. Bd.*, 97 Wn.2d 454, 458, 645 P.2d 1075 (1982). Principles of statutory construction are used to interpret a statute only if the statute is ambiguous. *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002). Further, the Washington Supreme Court has repeatedly held that the GMA, in particular, is not to be liberally construed. *Thurston County v. WWGMHB*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008); *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n. 8, 174 P.3d 25 (2007).

Here, the plain language of the GMA permits amendments to the comprehensive plan outside of the annual cycle in response to an appeal "of a comprehensive plan" to the GMHB.

RCW 36.70A.130(2)(b). There is nothing ambiguous about this statutory language so as to require inference or interpretation. In looking for additional authority, it appears that in most GMHB cases where the exception has been discussed, the underlying appeal also includes one or more allegations of error pertaining to the comprehensive plan, which is not the case here. Notably, the Eastern Washington Growth Management Hearings Board has appeared to recognize the distinction and limitation of the exception in at least one case, *Larson Beach Neighbors and Jeanie Wagenman v. Stevens County*, First Order on Compliance, No. 07-1-0013, (April 16, 2009). In that case, the EWGMHB was presented with a public participation challenge to development regulations adopted in response to a previously issued compliance order. As here, the underlying appeal also solely challenged development regulations. The Board's analysis of the issue turned on application of a Stevens County ordinance governing public participation, which specifically included language based on the RCW 36.70A.130(2)(b) statutory exception for appeals. The Board held that the underlying public participation ordinance was not applicable in part because "RCW 36.70A.130(2)(b) permits the amendment of a comprehensive plan, after appropriate public participation, outside of the annual amendment limitation, **it does not address development regulations** ..."(emphasis added).

Based on the above, I do not believe that the City's proposed amendments qualify to be considered and adopted outside of the annual comprehensive plan review cycle. Accordingly, the City should immediately withdraw the proposed amendments and strike the scheduled public hearing. To the extent Olympia Municipal Code ("OMC") 18.59.070(A)(5) addressing the appeal exceptions omits the additional GMA language expressly referencing the appeal "of a comprehensive plan," it is itself inconsistent with state law and provides the City no additional authority to act. The City can, and must, achieve compliance with the WWGMHB order through further amendment of its development regulations or a plan submitted to the WWGMHB to achieve compliance through consideration of amendments as part of the annual comprehensive plan amendment cycle. Inclusion in the annual cycle appears particularly appropriate where, as here, the City is in the midst of an overall update to its comprehensive plan.

B. The City's Short-Notice Hearing on the Proposed Amendments Does Not Provide for Adequate Public Participation

The City staff report suggests that it is appropriate for the City to rely on its prior public process for the challenged text amendments, together with findings from the Conditional Use Permit hearing on the permanent homeless encampment itself – findings which are yet subject to potential appeal under the Land Use Petition Act - as adequate to support the proposed amendments to the comprehensive plan. There is simply no legal authority for the City to truncate public participation on proposed new amendments to the comprehensive plan by relying on other land use proceedings. In addition, although the City may be able to show technical compliance with its notice provisions found in OMC 18.78 by publishing a basic legal notice on Friday, May 25, 2012, just prior to a holiday weekend, the City's actions bear all of the characteristics of being taken in a manner reasonably calculated to reduce or minimize my clients' participation in the public process. Although being taken in response to a compliance

order in a case where I appeared, I received no City notice of the proposal even as a matter of courtesy. Instead, I found it myself in the legal notices on Friday, May 25, immediately emailed Mr. Friddle and Mr. Nienaber early in the day requesting copies of the amendments and SEPA documentation, and had to wait until Tuesday, May 29, four days before the hearing to receive them. Only some of my clients received written notice, again on Tuesday due to mailing delays.

Even if the City could lawfully avail itself of the exception in RCW 36.70A.130(b)(2) to adopt the proposed amendments outside of the annual cycle, it may only do so after "appropriate public participation." *Id.* Chapter Twelve of the City's Comprehensive Plan sets out the City's principles of public involvement, which include using a variety of means to inform "affected parties" about "City programs or decisions that may effect them" (PI 1.3) and to "develop participation plans for major…decision processes" that use a variety of means to take and receive public comment (PI 1.5). Publishing a legal notice and sending out a mailing before a holiday weekend for a hearing scheduled to take place a week later on amendments changing the long-standing Light Industrial policies of the comprehensive plan to expressly allow a residential use seems woefully inadequate against these policies. Moreover, as a policy matter, such a process is grossly inconsistent with Olympia's actions in other cases and projects, in which the City has continually placed significant emphasis on the importance of participation by surrounding property owners and neighborhood groups in this type of decision. That should be equally the case for my clients, the property owners and neighbors of Light Industrial properties impacted by the proposed changes.

Having been found non-compliant with the GMA in its adoption of the original ordinance, an action that has nonetheless allowed Quixote Village to proceed through the permit process, the City should not knowingly embark on a second legally questionable process purporting to cure it. I urge the City to strike the public hearing and reconsider its approach.

Yours very truly,

Heather L. Burgess

HLB/dlg

cc: Mayor Steve Buxbaum (via email: *sbuxbaum@ci.olympia.wa.us*)
City Manager Steve Hall (via email: *shall@ci.olympia.wa.us*)
Steve Friddle, Community Services Manager (via email: *sfriddle@ci.olympia.wa.us*)
Amy Tousley, Chair, Planning Commission (via email c/o City Staff Liaison Amy *abuckler@ci.olympia.wa.us*)
Darren Nienaber, Assistant City Attorney (via email: *dnienabe@ci.olympia.wa.us*)
Clients: John Peranzi, Tony and Isobel Cairone, Vallie Jo Fry (via email)

ORIGINAL

June 4, 2012

Olympia Planning Commission
City of Olympia
P.O. Box 1967
Olympia, WA 98507-5847

Re: Permanent Homeless Encampment Amendments to City of Olympia Comprehensive Plan - Public Hearing Comments, June 4, 2012

Dear Chair Tousley and Members of the Olympia Planning Commission:

I represent the Industrial Zoning Preservation Association ("IZPA"), an association comprised of property owners within the Mottman Industrial Park. I also represent individual Mottman Industrial Park property owners John Peranzi, Vallie Jo Fry, and Tony and Isobel Cairone. My clients own industrial property immediately adjacent to the proposed County property in Mottman Industrial Park where Quixote Village, a permanent homeless encampment, is now proposed. I provide the following comments on the above-referenced comprehensive plan amendments on behalf of both the IZPA and these individual property owners.

The City authorized Quixote Village via text amendments to its development regulations adopted on September 6, 2011 allowing the permanent homeless encampment as a conditional use in the Light Industrial zone. Although the text amendments purport to be applicable throughout the City's Light Industrial zoning district, the County's clear intent in requesting the text amendments was to allow the permanent homeless encampment to be built on a single specific County-owned parcel in the Mottman Industrial Park. My clients participated in the public process associated with adoption of the text amendments, specifically raising questions regarding the proposal's compliance with the Growth Management Act (GMA, RCW 36.70C) because of its inconsistency with the City's Comprehensive Plan policies for the Light Industrial zoning district expressing intent to avoid incompatible uses. My clients contended throughout that introduction of the homeless encampment would adversely impact ongoing industrial activity on the surrounding properties due to noise, traffic, and dust levels inconsistent with residential uses.

Following the City's adoption of the text amendments authorizing Quixote Village, Mr. Peranzi, Ms. Fry, and the Cairones timely petitioned for review of the amendments to the Western Washington Growth Management Hearings Board ("WWGMHB") Case No. 11-2-0011. Their case which successfully challenged the City of Olympia's adoption of text amendments to its development regulations authorizing in the Light Industrial zone. In its May 4, 2012 Final Decision and Order, the WWGMHB specifically found that the text amendments were inconsistent with the City's comprehensive plan policies LU 18.4 and 18.5 and directed the City to bring "its development regulations into compliance with the Growth Management Act...within 120 days." (Final Decision and Order at p. 30).

According to the City Staff Report for today's public hearing, the purpose of the proposed amendments to the City's comprehensive plan policies 18.4 and 18.5 is to bring the City into compliance with the WWGMHB order. I hereby provide the following procedural and substantive objections to the proposed comprehensive plan amendments on behalf of the Industrial Zoning Preservation Association as well as Mr. Peranzi, Ms. Fry, and the Cairones:

1. *The City's consideration and adoption of the proposed amendments outside the annual comprehensive plan amendment cycle in response to the compliance order is not itself compliant with the GMA.* In summary, the City is precluded from considering comprehensive plan amendments more than once per year unless an exception applies. RCW 36.70A.130(2)(a). The exception for amendments "to resolve an appeal of a comprehensive plan filed with the growth management hearings board..." found in RCW 36.70A.130(2)(b) is not applicable where, as here, the underlying appeal was of a development regulation. Detailed legal support for this argument is in the attached letter to City Attorney Tom Morrill dated June 1, 2012.

2. *The City's short-notice hearing on the proposed amendments did not provide for adequate public participation.*

The City Staff Report states that the amendments are being taken up in response to the WWGMHB compliance order; however, the City announced tonight's public hearing on the proposed amendments via legal notice published on the Friday before the Memorial Day holiday, and without specific notice to me as counsel for the Petitioners. Notices by mail were also sent on Friday, May 25, and not delivered until Tuesday, May 29, leaving three business days prior to the hearing to prepare. This method is not consistent with City public participation goals for comprehensive plan amendments, including but not limited to PI 1.3 and 1.5, as it did not allow for wider dissemination to potentially interested parties who may not have been involved in the prior public process on the text amendments. Detailed argument on this point is also found in the attached letter to City Attorney Tom Morrill dated June 1, 2012.

The City's truncated notice and response time for tonight's public hearing has limited the ability of IZPA's individual members to gather and prepare public comment on the proposed amendments. As such, I am concurrently submitting excerpts of the prior City record containing comments, objections, and testimony from property owners in the Mottman Industrial Park for the express purpose of preserving standing for those members who may have previously commented on the impacts of the County homeless encampment on their properties.

3. *The City cannot simply rely on prior public process for the text amendments and/or the Conditional Use Permit process to satisfy GMA public participation requirements for Comprehensive Plan amendments.* The City Staff Report refers to

the "lengthy public process" surrounding the challenged text amendments, citing various meetings, minutes, and proceedings leading up to their adoption. In addition, the City's SEPA Checklist for the proposed amendments dated May 24, 2012 references the Quixote Village Conditional Use Permit proceedings and file in response to checklist questions regarding noise, light, and dust impacts of the proposed Comprehensive Plan amendments. The City cannot simply rely on prior public process to address the Comprehensive Plan amendments. Even amendments undertaken in response to appeal are subject to public participation requirements. RCW 36.70A.130(b)(2).

4. *The proposed amendments render the City's comprehensive plan internally inconsistent.* The City's comprehensive plan must be an "internally consistent document." RCW 36.70A.070. The proposed amendments render the City's comprehensive plan internally inconsistent with respect to the following provisions:

- LU Policy 18.4. Adding "except a County homeless encampment..." does not render the provision consistent with the preceding sentence, "Limit non-industrial uses in industrial districts to those which complement or support industrial development." There is still no evidence whatsoever that the encampment "supports industrial uses." In the underlying appeal, the WWGMHB specifically found that conclusory statements about potential employment resources were not enough to support this assertion. (FDO at 21).

- LU Policy 18.5. Adding "except a County homeless encampment..." does not render the provision consistent with the preceding sentence, "Prohibit land uses which would be incompatible with existing or potential industrial uses." In the underlying appeal, the WWGMHB found, "there is evidence in the record that industrial uses in the area...generate dust, noise, and truck traffic" and went on to hold that such features were "potentially incompatible with a residential use." (FDO at 21). The very same evidence the WWGMHB relied upon for this conclusion has been resubmitted herewith and will be supplemented by the testimony of Petitioners at the public hearing.

- LU Policy 7.2. The proposed County homeless encampment should be considered an EPF under the policies set out in LU 7.2 and sited accordingly rather than simply allowed outright in the Light Industrial zoning district.

- LU Policy 8.4. The proposed amendments will introduce a multi-family type-use in an industrial zone, which is inconsistent with 8.3 policy provisions governing location and design of adjoining commercial and residential neighborhoods.

- LU Policy 8.5. The proposed amendments do not provide effective landscaped buffers or transitional uses between incompatible industrial and residential uses to mitigate noise, glare, and other impacts associated with such uses. There are no landscaped parking lots or other transitions as called for in LU 8.5(a).

- LU 18.1. The proposed amendments do not encourage industrial development that is compatible with surrounding land uses.

- Land Use Designation, Light Industrial. The Light Industrial designation is supposed to provide for "light industrial uses (e.g., assembly of products, warehousing) and compatible, complementary commercial uses." The proposed amendments allow a use inconsistent with this designation definition from the City comprehensive plan.

5. *The City did not coordinate the amendments with the City of Tumwater to ensure consistency with Tumwater's comprehensive plan for the Mottman Industrial Park.* The City's comprehensive plan must be consistent with the comprehensive plans of adjacent counties and cities. RCW 36.70A.100; WAC 365-196-640(1)(a). There is no discussion in the Staff Report indicating that the City has coordinated the proposed amendments with the City of Tumwater as GMA requires.

6. *The proposed amendments, which would allow for a residential use in the midst of an industrial zone without specified noise mitigation measures, will result in limitation of industrial operations and potential nuisance liability for surrounding industrial properties.*

In conjunction with the Quixote Village project, the IZPA had a study prepared by a qualified acoustics expert, Alan Burt of SSA Acoustics. Mr. Burt's study demonstrated that properties adjacent to the proposed Quixote Village in the Mottman Industrial Park will greatly exceed noise standards for residential areas permitted by WAC 173-60 at the property boundaries. The same would presumably be true of other industrial properties subject to the proposed comprehensive plan amendments. A copy of the SSA Acoustics report can be found at Tab 21 of the material submitted on my clients' behalf herewith. We respectfully disagree with City staff and the Hearing Examiner that the City can abrogate the rights of homeless encampment residents under WAC 173-60 through operation of its own zoning-based ordinance (OMC 18.40.080) where the City ordinance has not been amended and reviewed by Ecology to conform to zone changes. *See* WAC 173-60-030(2). Testimony at the Conditional Use Permit hearing established that the City did not resubmit the ordinance to Ecology for review after adopting the challenged text amendments. Detailed legal argument in support of this point can be found at Tab 18 of the attached materials.

In addition, industrial properties found to exceed WAC 173-60 noise limitations will be subject to liability for nuisance. The fact that the surrounding industrial conditions are improved from those experienced by homeless generally is irrelevant to this analysis. The coming to a nuisance doctrine is not a complete defense to a nuisance action. *Riblett v. Spokane-Portland Cement Co.*, 41 Wn.2d 249, 248 P.2d 380 (1952). The use of property in violation of the law regulating noise is likely nuisance per se. See *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135, 138, 720 P.2d 818 (1986). An activity or use that is a nuisance per se results in strict liability. *Tiegs v. Boise Cascade Corp.*, 83 Wn. App. 411, 418, 922 P.2d 115 (1996). The City should not adopt comprehensive plan amendments will create such liability for existing lawful uses. This liability cannot be mitigated without imposition of specific standards for noise mitigation, which are nowhere found in the proposed amendments or underlying development regulations.

7. *The proposed amendments fail to adequately consider and require mitigation for introduction of pedestrian and bicycle residential traffic into the Light Industrial zone.* In conjunction with the Quixote Village project, IZPA had a qualified traffic engineer, Mr. Ashish Sabnekar, P.E., review the proposed project. A copy of Mr. Sabnekar's report can be found at Tab 21 of the material submitted on my clients' behalf herewith. Mr. Sabnekar concluded that truck traffic posed significant risk to Quixote Village residents in the absence of dedicated pedestrian sidewalks and bicycle lanes, which are not required features of industrial roads. The proposed amendments do not require improvement of roads to residential standards or other specific measures to address this impact.

8. *The nature of the proposed County homeless encampment demands that the City treat it as an Essential Public Facility ("EPF") under the GMA and amend its comprehensive plan and development regulations to site the facility according to EPF provisions.*

The Panza submissions during the prior public process for the text amendments as well as County Commissioner statements in support of the project repeatedly stated that the County homeless encampment is a designed to serve a regional homeless population. The City's own CDBG Program Strategic Plan (Draft, July 2010) specifically describes the proposed County facility as regional in nature. The Panza, County, and City submissions also repeatedly pointed to this regional facility as difficult to site as justification for placing it in an industrial rather than residential zone.

The City is required to provide for siting of essential public facilities, which "include those facilities that are typically difficult to site." RCW 36.70A.200. The City's current comprehensive plan EPF provisions can be found in LU 7.2. If the proposed facility is in fact a regional facility serving a public need that is difficult to site, then it should be properly classified as an EPF, with associated required notice and siting provisions designed to protect surrounding landowners. Indeed, this is precisely the discussion that took place between the parties before the WWGMHB in

the underlying appeal. Notably, the Mottman Industrial Park, where there is no question that the facility is proposed, is already home to the County's ARC and juvenile justice facilities. Neither it nor other light industrial zoning district should have to bear more than its fair burden of housing difficult land uses.

9. *The proposed amendments are not consistent with County-Wide Planning Policies pertaining to similar facilities.* The GMA requires that the City's comprehensive plan also be consistent with County-Wide Planning Policies. The proposed amendments, which simply allow the County homeless encampment in the Light Industrial zoning district, do not provide a "rational and fair process for siting public capital facilities that every community needs, but which have impacts that make them difficult to site" as called for in Thurston County County-Wide Planning Policy No. IV, adopted September 8, 1992.

Thank you for your consideration of the above comments. For all of the above reasons, I urge the Planning Commission to reject the proposed amendments and instead consider any necessary changes during the upcoming 2013 Comprehensive Plan amendment cycle.

Very truly yours,

Heather L. Burgess
Phillips Wesch Burgess PLLC
724 Columbia St. NW Ste. 140
Olympia, WA 98501

cc: Clients

Steve Friddle

From: Heather Burgess [hburgess@pwblawgroup.com]
Sent: Friday, June 08, 2012 3:52 PM
To: Steve Friddle
Cc: Darren Nienaber; Deanna Gonzalez
Subject: Permanent Homeless Encampment/Amendments to Comprehensive Plan/Supplemental Public Comment for June 4, 2012 Public Hearing
Attachments: RHoverterLtr.pdf

Dear Mr. Friddle:

At the June 4, 2012 Planning Commission public hearing on the above-referenced amendments the Commission voted to hold the public hearing record open until 5:00 pm today, June 8, 2012, for additional public comment. The below supplemental public comment on the proposed amendments is hereby provided on behalf of my clients Tony & Isobel Cairone, Vallie Jo Fry, John Peranzi, and the Industrial Zoning Preservation Association ("IZPA"):

1. *Legality of hold-harmless requirements for permanent homeless encampment use to avoid nuisance per se liability*

My clients' comments to the Planning Commission included the concern of exposure of adjacent industrial property owners to liability for nuisance for noise, dust, and odors as a result of introducing a residential use into the City's Light Industrial Zone, as proposed in the Comprehensive Plan amendments under consideration. Following the close of public testimony at the hearing, a member of the Planning Commission asked Deputy City Attorney Nienaber whether or not there could be conditions imposed on the permanent homeless encampment, such as hold harmless provisions, which would preclude camp residents from making such nuisance complaints. Mr. Nienaber responded that he would research the issue and respond to the Planning Commission.

Although we do not have the benefit yet of Mr. Nienaber's response or underlying analysis, for purposes of the public hearing record we do not believe that a hold harmless agreement or condition imposing the same is lawful. In Washington, an individual may not waive a right where such a waiver violates public policy. *Shoreline Community College Dist. No. 7 v. Employ Sec. Dept.*, 120 Wn.2d 394, 409, 842 P.2d 928 (1992). Further, the persons protected by a statute cannot waive the statutory right either individually or collectively where a statutorily created right serves a public policy purpose,. *Id.* at 410. Nuisance law and similar statutes and codes governing noise, dust, etc., are designed to protect the health and safety of all citizens. Neither state law, nor local ordinance, expressly provide for any ability to waive noise, dust, or odor pollution provisions which would form the basis of a nuisance per se claim, as asserted in my June 4, 2012 letter to the Planning Commission. In our opinion, a City imposed condition of approval requiring the homeless residents of Quixote Village to waive their rights to the protection of health and safety laws would be construed as a violation of public policy in Washington and therefore and be unenforceable, providing industrial property owners no protection. In addition, we have substantial concerns that such a waiver or hold harmless agreement would also violate the residents' federal constitutional right to equal protection of laws, because health and safety laws should not treat the homeless or other impoverished persons differently than other citizens in this manner. Indeed, social justice legal doctrines would suggest that the City has an affirmative obligation not to.

Further, conditions on recipients of government benefits that implicate fundamental rights are subject to strict scrutiny and will only be upheld if shown to be necessary to promote a compelling governmental interest. *Shapiro v. Thompson*, 394 U.S. 618, 634, 89 S.Ct. 1322 (1969). The proposed permanent encampment will be a Thurston County facility, conferring a government benefit. Requiring encampment residents to waive health and safety protections in order to receive benefit of residing in the County's public permanent homeless encampment would not appear to survive strict constitutional scrutiny, if challenged.

Uncertain legal outcomes such as may result from attempting to enforce a hold harmless agreement condition do not afford my clients, industrial property owners, any meaningful protection – indeed, it is my clients who would incur the cost of defending them in any later lawsuit. As a practical matter, we believe that the only possible guarantee that might protect surrounding property owners from potential nuisance claims arising from introduction of the permanent homeless encampment would be for Thurston County or the City of Olympia to defend, indemnify and hold industrial property owners

in the industrial zone where the encampment is located harmless from any and all claims arising from or relating to the residents of Quixote Village including, but not limited to, claims resulting from noise, dust, or order, which include nuisance, trespass, and tort claims. Such indemnification should include protection from industrial owner/operator liability for vehicular/pedestrian accidents that are likely to occur as a result of the substantial increase in pedestrian traffic in an area without proper sidewalks and transit, and heavily traveled with trucks, as the Mottman Industrial Park has been shown to be.

To be effective, a County or City indemnification would need to extend beyond the duration of the resident's physical occupancy at Quixote Village through the statute of limitations period and any associated discovery rule.

2. County's purported effort to sell the underlying property

Mr. Krupp's testimony at the public hearing included statements that Thurston County had put the County industrial property in the Mottman Industrial Park which it now proposes to lease to Panza to establish the permanent homeless encampment called for in the proposed Comprehensive Plan amendments up for sale many times over the past years without attracting a willing buyer. The Board of County Commissioners repeated similar statements in their written public comment to you on the amendments submitted for the public hearing.

My clients dispute the validity of Mr. Krupp and the Commissioners' statements regarding alleged attempts to sell the underlying property. My individual clients, all of whom are long-time property owners in the Mottman Industrial Park, would like to re-iterate that they have have never once seen a "for sale" sign on the Thurston County property. My review of property-related records in conjunction with preparation of challenges revealed only one instance of Thurston County voting to deem the property surplus and put it up for sale, back in 2002. The County has steadfastly refused my clients' efforts to purchase the property as well as attempts to provide suitable alternative sites for the encampment in a residential zone. These efforts and offers were made repeatedly between March 2011, when my clients first learned of the proposed development regulations which would allow the facility in the Mottman Industrial Park, and September 2011, when the City Council adopted the development regulations allowing the proposed use. If the County wants to assert that it previously offered the property for sale, then it should provide the City with some proof of that, whether through listing agreements or advertisements, together with associated ordinances declaring the property surplus to the County, and making it available for sale.

3. Relevance of Conditional Use Permit decision

Mr Kalikow's testimony at the public hearing suggested that the Planning Commission can and should rely on the findings, conclusions, and decision of the City's pro tem Hearing Examiner on the underlying Conditional Use Permit for Quixote Village, issued in early May, together with his decision on the Motion for Reconsideration, in making a recommendation to the City Council on the proposed Comprehensive Plan amendments. I respectfully disagree. My clients participated in the CUP hearing below. The decision of the Hearing Examiner is not yet final, as the time for my clients to appeal the Hearing Examiner's decision under the Land Use Petition Act, RCW 36.70C, has not yet elapsed. The City should refrain from relying on findings and legal conclusions which are yet subject to legal review in Superior Court, and could yet be overturned.

Finally, attached for inclusion in the record please find a copy of Mr. Richard Hoverter's testimony and exhibit from Monday's public hearing. He brought, but neglected to leave, a copy with Ms. Buckler.

Thank you for consideration of these additional comments.

Best regards,

Heather Burgess
Counsel for Tony & Isobel Cairone, Vallie Jo Fry, John Peranzi, and the Industrial Zoning Preservation Association

Heather Burgess

CITY OF TUMWATER
Washington's First Community

City Hall
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Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4126

June 4, 2012

City of Olympia Planning Commission
P.O. Box 1967
Olympia, WA 98507

Delivered by FAX 360.753.8087

Dear Planning Commissioners:

I am submitting the following comments with regard to the proposed City of Olympia Comprehensive Plan amendments pertaining to homeless encampments on County land in industrial districts. While not specific to users, I understand that the amendments are targeted to address the needs of Quixote Village to locate on a parcel of County-owned land in the Mottman industrial area. Although the site is located in Olympia, the vast majority of the Mottman industrial area is within the jurisdiction of the City of Tumwater and we have a significant interest in actions that impact the viability of that industrial district.

In an October 31, 2011 letter to Mr. Steven Friddle, a copy of which is attached, the City of Tumwater expressed concerns about this location for residential uses. While the proposed use is described as a homeless encampment, it is still fundamentally a residential use. The people who reside here, regardless of their prior living conditions, will use the location the same way people who live in traditional homes use their residences. They should be entitled to the same rights and protections. I am concerned that this amendment as drafted will not allow those same protections to occur without impacting the legal viability of the industrial district.

The site also does not have good access to transit. People transitioning out of homelessness will be dependent upon transit to access employment and services. The Mottman area is not designated for investment in human services which further compounds the access challenges for residents.

Finally, I am concerned about amendments to an official policy document which will result in future incompatibilities between residential and industrial uses. Maybe today the uses surrounding the property at Mottman are not viewed as impacting a residential use, but in the future, uses in that district could be ones that emit odors, noise, and traffic at all hours. The necessary environmental review pursuant to the State Environmental Policy Act will require that the local jurisdiction, in all likelihood the City of Tumwater, assess the impacts of future proposed industrial activity. Applicants in the industrial district around this site will be required to spend time on studies and potentially be subject to mitigation that would limit the hours of operation and the types of activities, require monitoring, and necessitate costly mitigation to address noise, odor, traffic, and other industrial activities because of the proximity to a residential use.

The City received notice of this hearing in an email on May 24, 2012. Given the very short time frame to a hearing on June 4, 2012, I suggest that the Planning Commission leave the record open on this hearing in order to afford more time for the parties to meet and discuss potential solutions to the issues raised. We would certainly like to be a party to that discussion.

I want to make clear that this is not opposition to Quixote Village and that I support the efforts to find a collaborative solution to the challenge of homelessness. Any solution needs to be viable for the encampment and fair to the residents, whether at Mottman or any other location.

Sincerely,

Pete Kmet

Pete Kmet
Mayor

CITY OF TUMWATER
Washington's First Community

City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
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October 31, 2011

Mr. Steven Friddle, Lead Planner
Community Planning and Development Department
City of Olympia
PO Box 1967
Olympia, WA 98507-1967

RE: Application No. 11-0139 – Quixote Village

Dear Mr. Friddle:

Thank you for the opportunity to comment on the permits for the proposed Quixote Village project in the City of Olympia. The property is located immediately adjacent to the jurisdiction of the City of Tumwater across Mottman Road. Within the City of Tumwater and near this project are several large residential neighborhoods as well as the Mottman Industrial Park. Thus, the City of Tumwater has a direct interest in the success of the Quixote Village.

Jill Severn of Panza and representatives of Quixote Village briefed the City Council earlier this year. We appreciate learning about the project from the proponents. The City is supportive of the long-term commitment to provide for housing and services for the homeless and to find Camp Quixote a permanent home. In that spirit, we offer the following comments:

1. This location is removed from bus transportation and other human services. While we understand the availability of the site and the opportunity to be located near ample employment opportunities, we are concerned that this will draw other human service uses to the Mottman area. This is not a basis to deny permits for this project, but it should be recognized that the City of Tumwater has not designated this area as a site for significant investment in human services.

2. Panza's commitment to this facility is appreciated and we believe they will do a good job as a responsible sponsor of the facility. A permanent homeless village will be a success if operated professionally and responsibly as Panza has planned. It will be important to maintain the trust of the current and future nearby businesses and residents as time goes on. That trust can be best maintained with communication and open access to information, particularly if the sponsorship changes over time. In order to ensure a mechanism for this communication, we request that the following condition be applied to the project approval:

   The applicant, owner and/or responsible party shall provide an annual report to the City of Olympia, City of Tumwater, and Thurston County; and shall make the report available to the general public and neighbors. The report shall be submitted prior to March 1 of each year and shall document the

ownership of the Village, the current contact names and information for the project, success and challenges in the operation of the Village, status of resident population, any plans for expansion or significant modifications to the operations, and the status of any long-term permit conditions that may be imposed.

3. The permit approval should clearly reference existing City of Olympia procedures for review and revocation of a permit for noncompliance with conditions. If such procedure does not currently exist, a new condition should be added to address the potential of future noncompliance. The annual report should provide information on these procedures.

Again, thank you for the opportunity to comment. We look forward to Quixote Village being a great neighbor and part of our community.

Sincerely,

John T. Doan, AICP
City Administrator

c: Don Krupp, Thurston County Manager
Jill Severn, Panza

Downstream Properties, LLC
Richard L. Hoverter, Manager
1136 Canning Ct. SW
Olympia, WA 98512
Tel: 360-866-4741 fax: 360-866-4743
e-mail: rlh@advance-equip.com

June 4, 2012

City of Olympia Planning Commission
Olympia Community Planning and Development Department
P.O. Box 1967
Olympia, WA 98507-1967

Members of the Commission:

I own a building in the Mottman Industrial Park, nearby the proposed Camp Quixote. I urge the Commission to recommend to the Olympia City Council that the Comprehensive Plan Amendments NOT be authorized. I have discovered a longstanding use of a nearby Industrial Park property that is utterly incompatible with the proposed camp. This existing use is highly dangerous and would never be allowed in a residential area. The question is: will a residential use be allowed next door to it?

I have watched this activity occur often for the last four years. It is interesting to watch, but I can assure you that you do not wish to live next door to it.

I refer to the training of police attack dogs by the Thurston County Sheriff, and the Olympia, Tumwater, and Lacey Police Departments. The training takes place in the yard of the warehouse immediately to the west of the camp.

Here is a photograph of the type of dog that is used.

There can not be a person here tonight, who would let her family live next to an unfenced, open-air police dog training facility. Yes, there will be children in Camp Quixote.

Of course, one solution is to just stop training the dogs there. The police can easily be ordered to do so, and I am sure that this is what will soon happen. Then, this use of the Industrial Park will no longer conflict with the proposed camp, and all will seem well. But it really won't be.

Panza and others have assured us that they would never seek to limit our rights to use the Industrial Park for its established purposes. But when Thurston County is intimidated into giving up these activities, these reassurances from Panza will finally be exposed as empty rhetoric.

This situation illustrates why I hope the camp will not open. If it does, an activity that has been going on for years, is known to and sanctioned by four local governments, and that is an acceptable use for an industrial park, will have been quashed. All you have to do is change a couple of nouns to see other industrial activities, now acceptable, fall victim to the same process. I'm thinking about noise, traffic, painting, dust, weekends, nightime operations.

I'm not describing some hypothetical case that might happen. It is happening this minute, at this meeting. Proponents of Camp Quixote, will not have to think very hard how to overcome this problem. They will conclude that the dog training must end. Their supporters in local government will agree. The camp will then go forward. The existing use, legal, sanctioned and longstanding, will end.

But it will establish a dangerous precedent that I will continue to oppose. An highly unusual new use for a property, with enough government support, will prohibit an established, sanctioned, and legal use of that property. I do not think that is fair and I do not think it should be legal, and that is why I ask the Commission to recommend AGAINST the proposed amendments.

Sincerely,

Downstream Properties, LLC

Richard L. Hoverter, Manager

enclosed: photo of policedog

KALIKOW LAW OFFICE
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barnett@kalikowlaw.com

Barnett N. Kalikow, Attorney

June 5, 2012

Olympia Planning Commission
P.O. Box 1967
Olympia, WA 98507

Via Email to Steve Friddle <sfriddle@ci.olympia.wa.us>

Re: Comprehensive Plan Amendment re Homeless Encampment Ordinance

Members of the Planning Commission:

Thank you for providing an opportunity to supplement the record on this plan amendment. I represent Panza, the non-profit organization formed to facilitate the needs of the Quixote community, including the building of Quixote Village on a permanent County-owned site.

We do not intend to labor the members of the Commission with another retelling of the history of the planning for this site. It included a number of hearings and public meetings before this Commission and the City Council and I will assume you are passingly familiar with that record.

We want to make just a few points in response to some of the testimony we heard Monday night and to suggest a possible way of approaching your task that may be of long term benefit to the City and to the plan.

Comprehensive Plan Amendment Does Not Affect Quixote Village Plans

The first and perhaps the most important issue is to reiterate that in fact what you are doing with this amendment is neither allowing nor disallowing Quixote Village. The Ordinances that have allowed it are valid and currently in effect; the Growth Management Hearings Board could have but did not invalidate them. Panza and Thurston County properly made application under those Ordinances for a Conditional Use Permit and building permits; the CUP application was referred to a very experienced *pro tem* Hearing Examiner, Mr. Wick Dufford; Mr Dufford held hearings wherein everyone who wished could testify, and at the conclusion of those hearings after due consideration, he issued the CUP imposing considered and appropriate conditions. That permit is not up for your review.

Washington's "Vested Rights" doctrine has been an integral part of our law since the 1950's (*Hull v. Hunt*, 53 Wn.2d 125 (1958)) whereby an applicant for building rights may rely on the laws and

ordinances and regulations in effect at the time that his completed building application is submitted. Therefore, even if the permanent homeless encampments ordinances were repealed today, that repealer would not affect the processing of the current application, nor the finality of the CUP issued.

The Growth Management Hearings Board's own founding statutes reiterate this point with some force. Even if the Board had invalidated the ordinance it would not affect this particular application.

> The Growth Management Act states:
> A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.
> RCW 36.70A.302(2)

Thus unless a court of law finds that the Hearings Examiner did not properly or legally exercise his discretion, which we believe is highly unlikely, and such a court further finds that the application cannot be properly conditioned in *any* way to permit this use, which is substantially even more unlikely, your work will not bear on this application.

That of course is not to diminish your task, which is to end the disharmony the Board found between the ordinances and certain policies in the Comprehensive Plan. We support City staff's approach to this task but will offer an additional course for your consideration as well. See below.

The Hearing Examiner Has Already Determined That The Quixote Residents Do Not Have the Legal Right to Complain about Industrial Uses

Before we get to that, however, we wish to address one other issue raised by Commissioner Leveen; that of Quixote residents foreswearing, as a condition of approval, making complaints about the effects of industrial uses of their neighbors.

Although we believe that issue is now moot, as explained above, we should point out that the hearings examiner actually addressed Commissioner Leveen's concern when he pointed out in his decision such complaints are a non- issue, both because the testimony showed that this population is unlikely to make such complaints, but more importantly because the courts would not entertain such complaints under the well-known equitable principle that no one can "move to" a known noxious use and then complain about it as a nuisance. This is specifically true if the use is an industrial use in an industrial zone. (see decision excerpt attached hereto) There *is* a condition that residents must be informed that this is an industrial zone and they can expect typical industrial uses as a result.

A Proposal for a Long Term Solution

Part of the problem, in our understanding, that provided the grounds for the GMHB's findings in

this case is that the planning goals perhaps took in a bit too much in the way of specific uses and specific prohibitions, which are normally the role of zoning regulations, without clearly identifying the reasons for the prohibited and conditional *residential* uses.

Although we recognize that to solve the current problem the City's proposed Amendment is necessary, we believe that placing the existing exceptions to a prohibition on residential uses in a context that allows for natural development of uses that are non-offensive to the general goals is a necessary follow up. The City's proposal may solve the problem for today but does not complete the mission of comprehensive planning. We would like to propose a long term solution to the problem in addition to the short tem "fix."

The other issue that we have identified that might be appropriate for amendment or update, is the reality that county government is a major landowner in the LI/C district and performs a number of functions on its land that do not interfere with industrial/ commercial uses but certainly do not support them either. The Commission may need to include some recognition to this reality into the goals and policies of the Plan.

Our analysis of a long term solution for the issue of residential uses begins with three questions:

1. What are the attributes of residential uses that are actually antithetical to the industrial/commercial uses?
2. Do the pre-existing permitted or conditionally allowed residential uses possess those attributes?
3. Does a permanent homeless encampment on county land possess those attributes?

We would place the attributes that are antithetical to industrial/commercial use into two broad categories: A) Incentive for gentrification; and, B) Inappropriate environment for residents.

A) Gentrification

By gentrification we mean the tendency of residential uses in industrial areas to attract other residential users searching for value and thereby eroding the land base for industry, and, over time, creating a political climate that disfavors noxious industrial uses such that laws are changed and industry and commerce are squeezed out. This is a real and substantial concern in industrially zoned property and the neighbors have understandably raised it.

Permitted and conditional uses in the zone have previously included jails and prisons, transitional housing for sex offenders, and on-site guard quarters or similar quarters for those who need to live on the industrial premises. All of these uses have the common thread of not being an attractant to other residential uses and all but the last are actually repellants to the kind of gentrification that is normally a concern to industry: Extremely few people want to build or purchase residences next to a jail or a halfway house for sex offenders, especially if they have children. That is why these uses locate in the industrial zone; they cannot practically locate anywhere else.

We believe that an adult homeless encampment on County property fits comfortably into this category of repellants for gentrification for all of the reasons just stated. People will not choose to build

or purchase next to them and they cannot practically locate anywhere else.

B) Inappropriate environment for residents

Industrial zoned properties generally do not contain amenities such as parks, playgrounds, and schools, and instead contain uses that create smoke, noise and odor that families frequently find offensive. They are not conducive to raising children or otherwise nurturing long term family relationships.

These reasons are simply not an issue for the prisoner, nor the night watchman at the factory, nor for the sex offender awaiting complete release into society from transitional housing.

Similarly these are not issues for a homeless encampment. The environment is less offensive than where they came from, there are no children to nurture nor can there be under the terms of the ordinance. And although there are a few instances where individuals have stayed in the Quixote community for a number of years, that is a rare exception, and most find a permanent place after a year or two. The program is designed and formally classified as transitional housing.

When we view Ms. Burgess' clients objections and alleged inconsistencies through the lens of a proper analysis of the actual purposes of the residential prohibitions, they melt away. They have continually testified about, and their advocate has skillfully exploited the term, "residential uses" to conjure up images of young families and two car garages and then attack that image as inconsistent with the written policies. That is not what this use is about.

Once a policy or goal that encompasses a proper analysis of actual use inconsistencies can be adopted into the comprehensive plan, it will be clear that the planning staff's proposed amendment is actually a clarification of what was always the unstated policy of the Plan, rather than an exception to it.

One other element of this approach would be to recognize that Thurston County is a major landowner within the LI/C zone, County property is generally not available for private industrial development, and nothing in the plan is intended to deprive Thurston County of its ability to use its property for legitimate and traditional governmental services and uses.

I have drafted such examples of policy clarifications that I would ask the Commission to consider in the regular update cycle. I do not insist on this verbal formulation. Once these ideas can be incorporated in the Plan for the LI/C zone we believe that most of the concerns of the GMHB and current inconsistencies or perceived inconsistencies simply disappear.

> Residential Use Policy: Standard residential uses are generally prohibited in the LI/C zone; however, permanent structures for those residential uses that do not include families with children, are largely transitional or penal in nature, and are not included otherwise in existing residential zones, may be permitted in the LI/C zone either as allowed or conditional uses, as appropriate, in development regulations.
>
> Governmental Use Policy: Thurston County is a major landowner within the LI/C zone, and County property is generally not available for private industrial development. Nothing in the plan is intended to deprive Thurston County of its ability to use its property for legitimate and traditional

governmental services and uses.

Thank you for the opportunity to comment on these amendments.

June 8, 2012

KALIKOW LAW OFFICE

Barnett N. Kalikow, WSBA #16907
Attorney for Panza

and, perhaps, the Panza board. The evidence supports a finding that the number of parking spaces to be provided will be adequate.

30. The application was circulated among City departments. Their recommendations are incorporated into the Conditions of Approval for the Conditional Use.

31. The Staff Report analyzes the application in light all of the requirements of the new ordinance applying to a County Homeless Encampment. As conditioned, the staff determined that the proposal is consistent with the ordinance. This includes site criteria, security concerns and health and safety considerations. The Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as if fully set forth.

32. In its presentation for the public hearing on the Conditional Use application, IZPA suggested several conditions in the event the Hearing Examiner were to approve the permit. They involved access to transit, an operations and security plan, providing more parking, limiting use of the community building, a ceiling of 40 as the maximum number of residents, building a sidewalk to connect to existing bus stops, and providing noise mitigation.

33. The other parties were given an opportunity to reply to these suggestions. Panza replied, disagreeing with the need for most of the conditions, but stating it would not object to conditions limiting the number of residents and limiting the use of the community building. The City essentially agreed with Panza. The County explicitly concurred in Panza's response.

34. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. OMC 18.50.060(E)(2)(b), OMC 18.82.120(z).

2. This case stands the usual environmental challenge on its head. IZPA is not concerned that the operation of Quixote Village will directly impose adverse impacts on the environment of the industrial park. Rather IZPA is concerned with how to avoid impacts the present users of the industrial park fear they might impose on the environment of the homeless encampment. In short, the IZPA members fear that Quixote Village may force them to make changes in what they presently do or go to great expense to avoid such changes. At bottom the case is an argument about compatibility of uses, not about the environmental impact of a new use. It is the kind of situation for which the law of Conditional Uses is designed.

APPEAL

3. In the SEPA appeal due deference must be given to the expertise and experience of City staff. OMC 18.75.020(F).

4. The noise issue in this case presents an example of what at common law would be termed "coming to a nuisance." Under this concept one cannot move into an industrial district

and "expect the quiet of a farm." In circumstances such as presented here, the incoming quiet use could expect no recovery against noisy pre-existing users. The decision reached here is consistent with this long-held notion of equity. Under the facts, operation of the homeless village is not likely to interfere with present uses of the industrial park.

5. Noise enforcement is complaint-based and the facts show it is unlikely that residents of the County encampment will make noise complaints. But, even if such a complaint were made, it would not result in a violation under the City's interpretation of its noise ordinance. Under that interpretation, the applicable standards for a noise-receiving property are governed by the zone in which such that property lies. In the City's view of its own ordinance, because the County encampment will be within a light industrial zone, no noise limits will apply.

6. Deference should be given to the City's administrative interpretation of its own standards. The Examiner concurs with Olympia's reading of its noise regulations. The Examiner concludes that noise enforcement against industrial or commercial users of the Mottman park is not a "reasonable likelihood" and therefore cannot give rise to a finding of "significant." WAC 197-11-794.

7. IZPA argues that under the State noise regulation, Chapter 173-60 WAC, the standard for a noise-receiving property is governed by the use of the property, not by its zone, and that therefore, the standards for residential property should apply to noise received within the homeless village. Having accepted Olympia's interpretation of its own regulation, the Examiner is without authority to adjudicate any purported conflict with State law.

8. Accordingly the Examiner concludes that, as to the noise issue, there is sufficient information in the record to support the threshold determination and that the appellant failed to prove that there is a reasonable likelihood for significant adverse impacts from noise.

9. The traffic issue is not about vehicular traffic, but about pedestrian safety. The City has proposed a condition that would require a widened asphalt shoulder separated from the main roadway by rumble strips to more safely accommodate walkers and bike riders. This condition would effectively meet the intent of the improvements suggested by the appellant.

10. The appellant argues that this matter should have been addressed prior to the issuance of the DNS rather than, as here, later during the permit review process. The appellant states that the Examiner has no power to convert the DNS issued here into an MDNS by adding a SEPA-based condition which would eliminate a significant impact.

11. This approach seeks to insist on a sort of procedural formalism which is unnecessary to reach the substantive result sought. SEPA has the aim of producing full disclosure in order that decisions significantly affecting the environment be made by deliberation, not by default If such disclosure is made before a decision on a project is made, the aims of SEPA have been fulfilled. Therefore, it is irrelevant that the City developed some environmental information after the DNS was issued. The question is what was known and what were the contours of the project at the time of decision on the permit. If full disclosure had been achieved by then, the purposes of SEPA were served.

THURSTON COUNTY
WASHINGTON
SINCE 1852

COUNTY COMMISSIONERS

Cathy Wolfe
District One

Sandra Romero
District Two

Karen Valenzuela
District Three

BOARD OF COUNTY COMMISSIONERS

June 4, 2012

Dear City of Olympia Planning Commission:

The Board of Thurston County Commissioners (Board) appreciates the priority that the Olympia Planning Commission has placed on the Camp Quixote project. The Planning Commission's thoughtful consideration given to this topic is commendable and exemplifies your commitment to public service.

The Board supports the development of a permanent homeless encampment at the Mottman Road location. The number of homeless in our community has increased steadily over the past several years. A well managed and appropriately regulated permanent homeless village will promote the security and oversight necessary to provide our homeless population with opportunities to stabilize their lives and eventually move on to other housing in our community.

The Mottman Road site was selected after a thorough analysis and review of potential sites throughout the County. During this process, the County found the Mottman Road site was the most appropriate location based on the following:

- The property is not included in the inventory of industrial or buildable lands; therefore, will not have any impact on the supply of such lands to accommodate future growth,
- The Mottman Road location had been on the market but no willing buyer came forward,
- The site is owned and managed by Thurston County,
- The acreage has ready access to water and sanitary sewer, and is served by public transportation
- The site is conveniently located near public health and social service facilities as well as law enforcement.

The Board enthusiastically endorses the proposed amendments to the Olympia Comprehensive Plan that will enable this critically needed facility to operate. A measure of a civil and prosperous society is not just the opportunities it provides to those who have succeeded, but also the opportunities it provides to those needing to succeed. This is a chance to provide that opportunity.

Thank you for your consideration.

Sincerely,

Cathy Wolfe

Cathy Wolfe, Chair

Karen Valenzuela

Karen Valenzuela, Vice Chair

Sandra Romero

Sandra Romero, Commissioner

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