

HALVERSON | NORTHWEST LAW GROUP

EXHIBIT D

May 14, 2020

*Via Email (whiter@pasco-wa.gov; gonzalezjb@pasco-wa.gov)
and US Mail*

City of Pasco
Community Development Department
P.O. Box 293
525 N. Third Ave.
Pasco, WA 99301
Attn: Rick White and/or Jacob Gonzalez

AND TO:

City of Pasco Planning Commission
P.O. Box 293
525 N. Third Ave.
Pasco, WA 99301
Attn: Tanya Bowers, Chairperson

RE: Comments on CPA 2020-01, the Proposed (Modified) City of Pasco UGA
Expansion

Our Clients: Property Owner: Fred Olberding
Purchaser/Developer: Big Sky Developers, LLC

Dear Sirs:

Introduction and Background

Our office represents Mr. Fred Olberding who owns property north of Burns Road adjacent to the current Pasco city limits and slated for inclusion in the City of Pasco's ("City" or "Pasco") UGA expansion currently being considered by the City of Pasco and its Planning Commission as part of its required periodic review of its Comprehensive Plan. Our office also represents Big Sky Developers, LLC currently under contract to acquire the property and develop it for residential use. Collectively attached hereto as **Exhibit A** is a Franklin County parcel map and the City's draft October 2019 Future Land Use Map showing the property at issue (the "Property"). The Property currently is under contract to be sold to Big Sky Developers, LLC for future residential development contingent upon the property being included in Pasco's UGA **and** zoned for residential development.

Raymond G. Alexander
Alan D. Campbell++
J. Jay Carroll
Paul C. Dempsey**
James S. Elliott
Yuridia Equihua
Robert N. Faber
F. Joe Falk, Jr.+
Mark E. Fickes
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Lawrence E. Martin*
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CPA 2018-03, a proposal to expand the City's urban growth area, was originally submitted in June of 2018. The City's original Future Land Use Map included the Property within the City's expanded UGA with a land use designation of Low Density Residential consistent with all the surrounding property in the area. The City now proposes to reduce its UGA expansion in accordance with a draft (updated) Future Land Use Map dated October 2019 attached as **Exhibit B**. The proposed new Future Land Use Map, without specific notice to our client and without notice being republished or recirculated in accordance with SEPA and GMA mandates, now proposes to designate an approximately 30-acre portion of the Property (highlighted in red on the attached Future Land Use Map) as "Commercial" rather than Low Density Residential property as originally proposed.

Our clients are opposed to the proposed Commercial designation and believe that such a designation is contrary to the goals of the state's Growth Management Act, would be a clearly erroneous land use designation and is being proposed without adequate public notice and without consideration of the as-built environment. Our clients would request that the entire 80-acre Property within the City's proposed UGA remain designated Low Density Residential as originally proposed for the reasons set forth below.

Please consider this letter a specific and continuing request for special notice of all maps, recommendations, hearings and meetings relating to the City's UGA expansion requests, including those relating to the Property.

The Olberding Property Should Remain Designated Low Density Residential and The City's Proposed Commercial Designation Cannot be Supported.

A. Notice of the proposed map change has not been properly given.

The proposed draft, October 2019 Future Land Use Map proposed by the City was not properly published and circulated to affected property owners as required by applicable law. Washington law is clear that county or city actions to change an amendment to a comprehensive plan triggers the statutory mandate for public review and comment and robust public participation. RCW 36.70A.035; also see, *e.g. Spokane County v. E. Wash Growth Mgmt. Hr'gs Bd.*, 188 Wn. App. 467, 353 P3d. 680 (2015). While apparently on the last Planning Commission meeting agenda for Thursday, March 19, 2020 as item VII C (Urban Growth Area (MF# CPA 2020-001)), our clients did not receive notice of the change from a residential to a commercial designation in time to provide written comments. While Big Sky Developers' engineering representative, Caleb Stromstad attended the meeting, he noted that options for public comment were extremely limited. There were only a few people in attendance. Comments were limited to two minutes and

the meeting occurred at the beginning of the social distancing requirements of the pandemic, making public participation limited. At the meeting, Mr. Stromstad recommended that the commercial designation be removed and was told that the proposed UGA modifications (Alternative Number 3) was in draft form only and that additional opportunities for public and property owner comment would be provided.

Our clients' position is that the March 19 Planning Commission meeting did not meet the public participation requirements of the Growth Management Act and SEPA as applied to any material modifications to the Future Land Use Map. This letter and the attachments should be considered our clients' additional comments to be made part of the record without in any way waiving or limiting their right to supplement the record with additional written materials or in-person testimony at future Planning Commission meetings.

B. The City's proposed Commercial designation cannot be supported.

As an initial matter, the property owner and developer (Big Sky) both strongly support the City's inclusion of the Property within the City's new UGA. This is not in dispute. Our clients simply believe that based on GMA goals, the as-built environment and practical considerations, that an island of commercially-designated property is not needed and cannot be supported along Burns Road in the southwest portion of the Property.

First, there is absolutely no evidence in the record that the City of Pasco's inventory of commercially-designated and zoned property is inadequate. As a practical and legal matter, commercially-designated and zoned property should be located in and along established commercial corridors where commercial property and development already exists, such as along Road 68 or Broadmoor Boulevard. Our clients believe that the commercial designation proposed without notice to the owners or without any support on the record, violates one or more of the State's GMA planning goals including but not limited to the following:

(1) It fails to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(1).

(2) It fails to encourage efficient transportation systems coordinated with County and City Comprehensive Plans. RCW 36.70A.020 (3).

(3) It fails to promote the retention or expansion of existing businesses and recruitment of new businesses, and fails to encourage such growth where public services and facilities are available. RCW 36.70A.020 (5).

(4) It fails to protect the property rights of landowners from arbitrary and discriminatory actions. RCW 36.70A.020 (6).

(5) It fails to ensure that public facilities and services necessary to support the commercial development will be adequate. RCW 36.70A.020 (12).

Simply stated, the proposed small island of commercially-designated property is an illegal spot zone that violates the GMA goals set forth above.

The current as-built environment and practical considerations also make this site completely unsuitable for commercial development in the next 20 years. There is a large BPA power line on the west side of the Property which would be inconsistent with most commercial development, and which is a BPA main trunk line that cannot be moved. The 80-acres immediately east of the Property recently has been sold to the Pasco School District for a future high school site, which use would be inconsistent with any type of more intensive commercial use. Last and most importantly, the entire area (north, south, east and west) is designated Low Density Residential and already supports significant low-density residential development. The owners and developers are aware of no City or County property owner that supports a 30-acre island of commercial property in the middle of a residential neighborhood.

Finally, Burns Road is not a commercial collector arterial and is inadequate to handle any type of commercial traffic. Burns Road does not even have the needed right-of-way and is not connected west, to Road 68. GMA mandates recognize that urban growth should first occur in areas already characterized by urban growth that have adequate existing public facilities and capacities to serve the development. RCW 36.70A.110(3). Homeowners do not want the additional traffic from commercial development, and Burns Road would be inadequate to handle any significant amounts of commercial traffic and is not scheduled for improvement on the City's or County's 6-year road improvement plan. If the City of Pasco believes it needs more commercially-designated and zoned land within its UGA, this is not the place for it.

Based on the comments submitted to date, it appears the primary demand for Pasco's UGA is for additional residential property to support its documented population growth. All the City's proposed Commercial designation does in this instance is take 30 acres of prime residential development property out of its urban growth area, where significant residential development already is occurring. There is no evidence of a demand for additional commercial property in this area and even if there was, as set forth above, infrastructure won't support it. A simple review of the proposed Future Land Use Map shows this small 30-acre Commercial designation to be in effect an illegal spot zone

inconsistent with the surrounding community. In north Pasco, commercially-designated properties should remain around established commercial collector arterials such as Broadmoor Boulevard and Road 68 and should not be located in isolated residential communities.

Conclusion

For the above stated reasons, the property owner and developer request that the City's proposed Future Land Use Map be modified to remove the Commercial designation on the Olberding property. Our office is confident that after proper public comment and consideration of this letter and additional testimony that there will be no basis to include a commercial designation on the Olberding property. To insist on such a designation without legal support would be arbitrary and capricious conduct in violation of applicable GMA planning goals.

Respectfully submitted,

Halverson | Northwest Law Group P.C.

A handwritten signature in black ink, appearing to read "Mark E. Fickes", written in a cursive style.

Mark E. Fickes

MEF/jk

EXHIBIT A



FANNING RD

SOUTH END OF McDONALD PROPERTY

Department of Community &
Economic Development

