

Exhibit "A"
Development Agreement

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF YAKIMA, WASHINGTON AND
ROBERTO ARTEAGA & ARACELI GONZALES TELLO**

THIS DEVELOPMENT AGREEMENT ("agreement") is entered into between the City of Yakima, a Washington municipal corporation ("City"), and Roberto Arteaga and Araceli Gonzales Tello, individually and as husband and wife ("Developer").

WHEREAS, the City is a first class charter city incorporated under the laws of the State of Washington, and has the authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby to control the use and development of property within its corporate limits; and

WHEREAS, the City has the authority to enter into development agreements with those who own or control property within its jurisdiction pursuant to RCW 36.70B.170-36.70B.210, YMC 15.28.050 and YMC 14.10.010; and

WHEREAS, Developer is proposing a short subdivision consisting of eight lots on three parcels of approximately two acres at the northeast corner of S. 96th Avenue and Tieton Drive, Yakima, Washington (the "property"). The property legal description is in Exhibit 'A' and incorporated herein, and

WHEREAS, Developer intends to take certain steps to comply with environmental and land use requirements related to development of the property; and

WHEREAS, Developer is proposing the creation of a planned development for the proposed short plat consisting of seven duplex lots and a commercial lot with certain amenities for the property; and

WHEREAS, pursuant to the Growth Management Act, RCW 36.70A, the City adopted its Yakima Urban Area Comprehensive Plan. Subsequently, the City has revised and updated this plan and has adopted, and continues to adopt, development regulations to implement the plan, including adoption of Yakima Urban Area Zoning Ordinances, which zoned the property R-1 Single-Family Residential; and

WHEREAS, the parties intend this agreement to guide the current and future uses of the property; now, therefore,

IN CONSIDERATION OF mutual benefits, the parties agree as follows:

1. The proposed development. Developer's proposal for the property is hereby acknowledged and warranted to be for the purpose of constructing a mixed-use subdivision and planned

development. Developer specifically acknowledges and warrants that the proposal for the property is construction of not more than 7 two-family residential structures (duplexes) on separate lots and a single lot for commercial development together with accompanying amenities. The Developer's preliminary short plat, type 2 review and planned development application have been filed with the City. It will be reviewed by the Hearing Examiner for the City and, if approved, will be incorporated herein as if set forth in full. The said subdivision and planned development are referred to herein as the "proposed development" or "project".

2. Subject property. The project site is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (sometimes referred to as the "Subject Property" or "Property").

3. Parties to the Development Agreement. The parties to this Agreement are:

- a) The "City" is the City of Yakima.
- b) The "Developer" is Roberto Arteaga and Araceli Gonzales Tello, individually and as husband and wife.
- c) "Landowner" or "landowners". From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

4. Private undertaking. It is agreed among the parties that the proposed development is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

5. Conditions of approval. Developer agrees to abide by the terms and conditions of approval recommended by the Hearing Examiner, including construction of all infrastructure described on the preliminary short plat/planned development site plan map and incorporated herein by this reference as if set forth in full, including as the same may be revised to conform with conditions of approval set forth in the Hearing Examiner's Recommendation. Developer agrees that the use of the property pursuant to this Agreement shall be consistent with the project description identified in the Washington State Environmental Policy Act Determination of Nonsignificance issued by the City of Yakima on August 6, 2021 and incorporated herein by this reference as if set forth in full (the "DNS"). Developer agrees to abide by the mitigation and other requirement identified as a part of the DNS. Developer agrees to abide by the conditions of such further or additional land use permits or approvals as may be identified in the DNS, or as may otherwise be required by applicable federal, state and local law including, but not limited to, the City's Title 12 and all other applicable development standards, all as the same currently exist or may be hereafter amended; provided, however, that the procedures and substantive rules of the City's Master Planned Development ordinances, as codified at Ch. 15.28, Yakima Municipal Code as it existed as of the date of this agreement and incorporated herein by this reference, shall guide and control all matters related to said ordinances and to the planned development aspect of the proposed development until this agreement terminates as provided elsewhere herein. Developer agrees to make future applications or submissions as may be necessary to fully implement any phased review of the proposed development and any specific project proposed therein.

6. Summary of approved modifications to development standards. Reduction of the following Title 12 private road standards (YMC 12.06.090):

- a. Access easement width from 50 feet to 40 feet,
- b. Pavement width from 30 feet to 24 feet,
- c. Sidewalk on only one side of the street (YMC 12.05.010),
- d. Decorative streetlights that may not entirely meet the design standards of the City Engineer (YMC 12.06.080).

To the extent that is considered a reduction in City standards, slopes on the private street to exceed 10% as approved by the Fire Official in accordance with YMC 15.05.055.

Increase in lot coverage for Lot '8', the proposed commercial lot, to 100% (YMC 15.05.030(A), Table 5-1).

Modification of the following sitescreeing standards (YMC 15.07) to allow residential fences as they are installed, to serve as sitescreeing between commercial development on Lot '8' and contiguous residential lots:

- a. Requirement to sitescreeen a commercial land use along a property line shared with a vacant parcel in the R-1 zone (YMC 15.07.020),
- b. Required sitescreeing completion prior to occupancy or commencement of (in this case, commercial) use (YMC 15.07.100),
- c. Sitescreeing to be located on the property line (YMC 15.07.070(1)).

Permitted uses of the commercial lot are to be all listed Class 1, 2 and 3 land uses in the General Commercial zone subject to review under said classifications.

7. Developer's Compliance. Developer agrees to abide by all such conditions identified as a part of the Developer's Homeowner's Association and Declaration of Covenants, Conditions, and Restrictions for the proposed development and incorporated herein by this reference as if set forth in full.

8. Appeals. In the event that any of the permits or approvals associated with the proposed development, including but not limited to SEPA determinations, preliminary short plat, Type 2 Review or planned development approval, are or may be appealed, then in that event the City's obligations under this agreement and under the above-referenced development entitlements, shall be suspended, and may be terminated in whole or in part to the extent that the City reasonably believes necessary to maintain consistency between this agreement (and/or the above-referenced development entitlements) and the conclusion of any appellate proceedings associated with the proposed development. Developer agrees not to appeal any of the previously required permits or approvals associated with the proposed development, including but not limited to SEPA determinations, preliminary short plat, Type 2 Review or planned development approval.

9. Default/Notice. No party shall be in default under this Agreement unless it has failed to perform as required for a period of 30 days after written notice of default to the other party. Each

notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. The party not in default under this agreement shall have all rights and remedies provided by law or equity, including without limitation, damages, specific performance or writs to compel performance or require action consistent with this agreement.

10. No third party beneficiary. This agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision in this agreement.

11. Third party legal challenge. In the event any legal action or special proceeding is commenced against the City by any person or entity other than by a party to this agreement to challenge this agreement or any provision herein, including any of the permits, approvals or entitlements associated with this agreement, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. In such event, Developer shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to reasonable attorneys fees and expenses of litigation and damages awarded to the prevailing party or parties in such litigation. The Developer shall not settle any such tendered lawsuit without the consent of the City, which consent shall not be unreasonably withheld.

12. Term. This agreement shall continue in force for a period of thirty (30) years unless extended or terminated as provided herein or when the property has been fully developed, whichever first occurs, and all the Developer's obligations in connection herewith have been satisfied in the sole reasonable discretion of the City. Provided, however, that termination of this agreement shall not affect any of Developer's obligations to comply with the Yakima Urban Area Comprehensive Plan, any applicable zoning, subdivision, or other municipal codes, or any land use entitlements approved with respect to the property or proposed development. Termination of this agreement shall not affect any of Developer's obligations herein which expressly or by implication are to continue after the termination of this agreement; notwithstanding the generality of the foregoing, the parties expressly agree and covenant that the streets within the proposed development shall be required to be private and shall never be accepted by the City of Yakima as public streets.

13. City's reservation of rights. The parties intend this agreement is interpreted to the full extent authorized by law and as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170. Provided, however, that this agreement shall be construed to exclude from its scope and reserve to the City the authority which is prohibited by law from implementation by mutual agreement with consideration of parties acting under Ch. 36.70B RCW. Without limitation, this shall include the right of the City to impose new or different conditions on the property to the extent required by stormwater development standards and any serious threat to public health and safety. Developer acknowledges that any phased approach to developing the proposed development contemplates and requires the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA and other applicable law. Nothing in this agreement shall be construed to limit the authority or the obligation of the City or any of its officials or officers in complying with or applying applicable law during review of specific project proposals or other subsequent phases of the proposed development.

14. Developer's warranties and representations. Developer represents and warrants to the City that Developer has a property interest in the property, and that the covenants and obligations of Developer in this agreement and in the permits, approvals, and entitlements associated with this agreement and the proposed development do not violate or constitute a default under or breach of any agreement between Developer and any third party by which Developer is bound. Developer represents and warrants to City that Developer is fully authorized to enter into and perform its obligations under this agreement. Developer represents and warrants to City that there is neither pending nor, to the knowledge of Developer, any threatened legal action, arbitration or administrative hearing before any governmental authority to which Developer is a party and which could enjoin or restrict Developer's right or ability to perform its obligations under this agreement.

15. Modification of an approved master planned development overlay. Modifications to the adopted master development plan and/or development agreement may be requested from time to time.

Minor modifications will undergo Type 1 Review as defined in YMC Chapter 15.13. The administrative official shall review modifications to adopted master development plan and/or development agreement as a minor modification if it has been determined that:

1. The amendment does not increase the areas identified for any particular land use or increase the residential density approved in the master plan;
2. The amendment does not increase the total floor area of nonresidential uses by more than five percent;
3. The amendment does not materially change the type and character of approved uses;
4. The amendment does not materially change parking or traffic circulation within the development;
5. The amendment does not materially change setbacks, buffers, landscaping, shoreline, critical areas, or other mitigation measures
6. The amendment does not materially impact the overall design of the approved master plan; and
7. Other similar changes of a minor nature proposed to be made to the configuration, design, layout or topography of the master planned development which are deemed not to be material or significant in relation to the entire master planned development and are determined not to have any significant adverse effect on adjacent or nearby lands or the public health, safety or welfare.

Major modifications will undergo Type 3 Review as defined in YMC Chapter 15.15 and shall be referred to the hearing examiner in accordance with YMC 15.15.040. A "major modification" shall be any modification to an approved master development plan or development agreement that is deemed to be more significant than a "minor modification" as described hereinabove.

16. Further discretionary action. Developer acknowledges that the existing land use regulations for the City of Yakima contemplate the exercise of further discretionary powers by the City. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required hearings, or to limit the discretion of the City and any of its officers

or officials in complying with or applying existing land use regulation as appropriate. These powers may include, but are not limited to, review of additional permit applications under SEPA.

17. Vesting. The master planned development review shall be vested to development regulations, standards, conditions, and laws applicable at the time the development agreement is recorded, inclusive of specific conditions and standards set forth in said Development Agreement to the extent it complies with applicable Washington law. The vesting period shall be for the “Term” as stated in the development agreement and shall be agreed upon by the parties to the Development Agreement after giving consideration to the extent and complexity of the proposed development as well as specific development planning considerations raised by the Developer.

18. Termination. This Agreement shall expire and/or terminate as provided below:

- a) This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified and incorporated into this Agreement, and submits applications for development of the Property with consistent with such permits and approvals.
- b) This Agreement shall terminate upon the expiration of the term identified in Section 12 herein or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer’s obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.
- c) Effect upon termination on developer obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof shall not affect any of the Developer’s obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees, or taxes.
- d) Effects upon termination on City. Upon any termination of this Agreement as to the Developer of the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (providing that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then-existing planning and zoning laws).

19. Severability. If any provisions of this agreement are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law or tribunal with jurisdiction, then the remainder of this agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect.

20. Agreement to be recorded. This agreement may be modified only by written agreement of the parties hereto. This agreement or a memorandum thereof shall be recorded against the property as a covenant with the land which touches and concerns the property and shall be binding upon the City and Developer, their heirs, successors and assigns, and all future owners of the property.

Developer shall be responsible for the costs of recording. Any approved modifications to this Agreement shall also be recorded against the Property at the Developer's expense.

21. Agreement approval. This agreement, and any modification thereto, may only become effective upon execution by the City of Yakima following adoption of a resolution approving the same following a public hearing in compliance with Chapter 36.70B RCW.

22. Assignment of interests, rights and obligations. This Agreement shall be binding and inure to the benefit of the parties. No party may assign its rights under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of Developer and the City.

23. Governing law and venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Yakima County Superior Court.

24. Attorneys' fees. In the event of any litigation or dispute resolution process between the parties regarding an alleged breach of this Agreement, neither party shall be entitled to any award of attorneys' fees.

25. Covenants running with the land. The conditions and covenants set forth in this Agreement shall run with the land. Developer and every purchaser, assignee, or transferee of any interest in the Property or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of the Developer contained in this Agreement, as such duties and obligations pertain to that portion of the Property sold, assigned, or transferred to it.

26. Notices. Notices, demands or correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid, first-class mail to the following addresses:

City Manager
City of Yakima
129 North 2nd Street
Yakima, WA 98901

27. Entire agreement. This agreement constitutes the entire agreement of the parties and incorporates all prior discussions and agreements.

IN WITNESS WHEREOF, this Agreement has been entered into between the City and Developer and is effective as of the _____ day of _____, 2021.

Roberto Arteaga

Araceli Gonzales Tello

CITY OF YAKIMA

Robert Harrison, City Manager

ATTEST:

Sonya Claar Tee, City Clerk

STATE OF WASHINGTON)
) ss.
County of Yakima)

On this day personally appeared before me Roberto Arteaga and Araceli Gonzales Tello, individually and as husband and wife, to me known to be the persons described herein and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2021

Notary Public in and for the State of Washington,
Residing at _____
My Commission expires _____

STATE OF WASHINGTON)
) ss.
County of Yakima)

On this _____ day of _____, 2021, I certify that I know or have satisfactory evidence that Robert Harrison, City Manager of the CITY OF YAKIMA, is the person who appeared before me, and said person acknowledged that they are authorized to sign this instrument on behalf of the City of Yakima, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission Expires: _____

Exhibit “A” Legal Description

Parcel A:

That portion of the Southwest Quarter of the Southwest Quarter of Section 19, Township 13 North, Range 18 East, W.M., described as follows:
Commencing at the Southwest Corner of said Section 19;
Thence East 376.5 feet to the True Point of Beginning;
Thence North 30 feet;
Thence North 32°42' West 102.35 feet;
Thence North 0°39' East 244.5 feet;
Thence North 89°21' West 320.15 feet to the West line of said Section 19;
Thence South 0°26' West along said West line of said Section 19, a distance of 60.45 feet;
Thence South 51°01' East 481.3 feet to the Point of Beginning,

EXCEPT County Road.

Parcel B:

That part of the Southwest Quarter of the Southwest Quarter of Section 19, Township 13 North, Range 18 East, W.M., described as follows:

Beginning on the South Line of said Southwest Quarter of the Southwest Quarter of Section 19, at a Point 145 feet East of the Southwest Corner of said Section 19;
Thence continuing East 231.5 feet;
Thence North 51°01' West for 143.06 feet;
Thence West 120.29 feet;
Thence South 90 feet to the Point of Beginning;

EXCEPT County Road.

Parcel C:

In Section 19, Township 13 North, Range 18 East, W.M.;

That portion of the West Half of Lot 4 of said Section 19, described as follows:

Beginning at a point on the South Line of said Lot, 376.5 feet East of its Southwest Corner;
Thence North 51°01' West 481.3 feet to the West Line of Lot 4;
Thence South to its Southwest Corner;
Thence East to the Point of Beginning;

EXCEPT Beginning on the South Line of said Southwest Quarter of the Southwest Quarter of Section 19, at a Point 145 feet East of the Southwest Corner of said Section 19;
Thence Continuing East 231.5 feet;
Thence North 51°01' West for 143.06 feet;
Thence West 120.29 feet;
Thence South 90 feet to the Point of Beginning;

EXCEPT County Road,

AND EXCEPT those portions conveyed to the Yakima County under Auditor's File Numbers 3087358, 3087359, 7293036, 7335543, and 7335545, Records of Yakima County, Washington.

Situated in Yakima County, State of Washington.

Exhibit "B"
Hearing Examiner's Recommendation

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CITY OF YAKIMA, WASHINGTON
HEARING EXAMINER'S RECOMMENDATIONS

September 23, 2021

In the Matter of Planned Development,)	
Class (2) Duplex Use and Short Plat)	
Applications Submitted by:)	
)	
Roberto Arteaga & Araceli Gonzales Tello)	PD#001-21
)	CL2#016-21
)	PSP#009-21
For a Planned Development, 7 Class (2))	SEPA#009-21
Duplex Uses and a Commercial Lot in)	
An 8-Lot Short Plat within the R-1 Zone)	
At 9503, 9509 and 9515 Tieton Drive)	

A. Introduction. The preliminary findings relative to the hearing process for this matter are as follows:

(1) The Hearing Examiner conducted an open record public hearing on September 9, 2021.

(2) The thorough Planning Division staff report which was prepared by Senior Planner Eric Crowell was presented by Senior Planner Trevor Martin because Mr. Crowell was out of the state at the time of the hearing. The staff report recommended approval of the Planned Development, the 7 Class (2) Duplex Uses and the 8-Lot Preliminary Short Plat subject to conditions (*Document Index A-1 of the record*).

(3) Testimony in favor of the application was presented by the applicants' representative, Thomas Durant of PLSA Engineering – Surveying – Planning, who

Roberto Arteaga & Araceli Gonzales Tello
Planned Development, 7 Class (2) Duplexes
8-Lot Short Plat in the R-1 Zoning District
Located at 9503, 9509 and 9515 Tieton Drive
PD#001-21; CL2#016-21; PSP#009-21; SEPA#009-21

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also suggested revisions to some of the recommended conditions. Further testimony in favor of the proposal was presented by the applicants' representative, Leanne Liddicoat of Digital Design and Development, who indicated that grading the site to make the street slopes passable from Tieton Drive and from South 96th Avenue will require grading of the site that will likely lower to some extent the elevation of the duplexes on the north so as to possibly alleviate to some extent the two commenting neighbors' privacy concerns and that fencing for back yards along the north of the property could be expected even though it will not be required between residential uses.

(4) No one appeared to present testimony in opposition to the proposal.

(5) Written comments of nearby property owners were submitted by Robert McCulloch who commented about the Environmental Checklist; and by Luella Huff; by Randy and Bev Dahl; and by Bruce and Dixie Tillet who indicated by way of identical letters certain corrections to statements in the application, questions about the proposal and concerns about privacy, noise and traffic which caused them to strongly oppose the proposed development (*Document Index G-2, G-3, G-4 and G-5 of the record*).

(6) This recommendation has been issued within ten business days of the open record public hearing.

B. Summary of Recommendations. The Hearing Examiner recommends approval of this Planned Development with 7 Class (2) duplexes in an 8-Lot Preliminary Short Plat for the duplexes and for one lot that may be developed for one or more future commercial uses, subject to conditions.

C. Basis for Recommendations. Based on a view of the site with no one else present on September 7, 2021; the staff report, exhibits, testimony and other evidence presented at the open record public hearing on September 9, 2021; and a consideration of the applicable Planned Development criteria, Class (2) use

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criteria, Preliminary Short Plat requirements, development standards and consistency criteria; the Hearing Examiner makes and issues the following:

FINDINGS

I. Applicants/Property Owners/Representative. The applicants and property owners are Roberto Arteaga and Araceli Gonzales Tello who are represented by Thomas Durant of PLSA Engineering – Surveying – Planning, 521 North 20th Avenue, Suite 3, Yakima, Washington 98902 and by Leanne Liddicoat of Digital Design & Development, 1909 West Lincoln Avenue, Suite #1, Yakima Washington 98902.

II. Location. The location of the proposal is 9503, 9509 and 9515 Tieton Drive on Yakima County Assessor's Parcel Nos. 181319-33005, -33009 and -33010 at the northeast corner of the Tieton Drive/South 96th Avenue intersection.

III. Application. The main aspects of the history and details of these applications may be summarized as follows:

(1) These applications are for approval of a Planned Development, 7 Class (2) duplex uses and an 8-Lot Preliminary Short Plat for the 7 duplexes plus one lot for one or more future commercial uses. The property is located on approximately 2.03 acres in the R-1 zoning district at the northeast corner of the Tieton Drive/South 96th Avenue intersection.

(2) The applications for a Planned Development, for Type (3) Review of 7 Class (2) duplex uses and for SEPA Environmental Review were received on March 26, 2021. The application for a Preliminary Short Plat was received on

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May 25, 2021. The applications were deemed complete for processing on May 28, 2021. They are being processed under YMC Chapter 15.28 for the Master Planned Development, RCW Chapters 15.14 and 15.15 for the Class (2) duplex uses that have been referred to the Hearing Examiner for Type (3) review, YMC Chapter 14.15 for the Preliminary Short Plat review and YMC Chapter 6.88 for the SEPA Environmental review.

IV. Jurisdiction. Section 15.28.040(D) of the Yakima Municipal Code (YMC) provides that the Hearing Examiner shall hold a public hearing and submit a recommendation to the City Council relative to the Planned Development criteria listed in YMC §15.28.040. YMC §15.11.100(A)(1) provides that if any of the required approvals constitute a recommendation to the legislative body, the decision of the administrative official as to all such permits or approvals shall constitute a recommendation to the legislative body. Since the Planned Development application constitutes a recommendation to the City Council, the related Class (2) duplex uses and the proposed Preliminary Short Plat also constitute recommendations to the City Council.

V. Notices. The property was posted with a land use action sign on May 28, 2021. A Notice of Application and Environmental Review was sent to the applicant, SEPA agencies and property owners within 300 feet of the subject property on May 28, 2021. The Notice of Public Hearing and SEPA determination was sent to the applicant, SEPA agencies and property owners within 300 feet of the subject property on August 6, 2021. The Notice of the Public Hearing was also published in the Yakima Herald-Republic on August 6, 2021.

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VI. Zoning and Land Use. The zoning of the subject property is Single-Family Residential (R-1). The R-1 zoning district is intended to:

(1) Establish new residential neighborhoods for detached single-family dwellings free from other uses except those which are compatible with, and serve the residents of, this district, which may include duplexes and zero lot lines if established during the subdivision process;

(2) Preserve existing residential neighborhoods for detached single-family dwellings free from other uses to ensure the preservation of the existing residential character, and serve the residents of this district; and

(3) Locate moderate-density residential development, up to seven dwelling units per net residential acre, in areas served by public water and sewer system.

(4) Detached single-family dwellings are the primary use in this district. The district is characterized by up to sixty percent lot coverage; access to individual lots by local access streets; required front, rear and side yard setbacks; and one- and two-story structures. The density in the district is generally seven dwelling units per net residential acre or less.

(5) This zone is intended to afford single-family neighborhoods the highest level of protection from encroachment by potentially incompatible nonresidential land uses or impacts. Nonresidential uses within these zones are not allowed; except for public or quasi-public uses, which will be required to undergo extensive public review and will have all necessary performance or design standards assigned to them as necessary to mitigate potential impacts to adjacent residences.

(6) Duplex and multifamily development up to seven dwelling units per net residential acre may be allowed in accordance with Table 4-1.

(7) Nearby properties have the following characteristics:

Location	Zoning	Land Use
North	Suburban Residential (SR)	Residential
South	Local Business (B-2) & Suburban Residential (SR)	Residential
East	Suburban Residential (SR)	Residential
West	Local Business (B-2)	Residential

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VII. Yakima Comprehensive Plan 2040. The subject property is located within the Low Density Residential designation which provides for low density residential development. The following Comprehensive Plan goals and policies apply to this proposal:

(1) Goal 2.1: Establish a development pattern consistent with the community's vision.

(2) Policy 2.1.7: Allow new development only where adequate public services can be provided.

(3) Goal 2.3: Preserve and enhance the quality, character, and function of Yakima's residential neighborhoods.

(4) Policy 2.3.1: Provide for a wide variety of housing types within the city to meet the full range of housing needs for Yakima's evolving population.

(5) Policy 2.3.1(E): Duplexes. Continue to allow duplexes in appropriate residential zones, provided density standards are met. Consider incorporating design standards that emphasize a pedestrian-oriented design and the inclusion of usable open space.

(6) Policy 2.3.3: Create walkable residential neighborhoods with safe streets and good connections to schools, parks, transit, and commercial services.

(7) Policy 2.3.6: Allow some comparable nonresidential uses in residential zones, such as appropriately scaled schools, churches, parks and other public/community facilities, home occupations, day care centers, and other uses that provide places for people to gather. Maintain standards in the zoning code for locating and designing these uses in a manner that respects the character and scale of the neighborhood.

(8) Goal 5.1: Encourage diverse and affordable housing choices.

(9) Policy 5.1.3: Encourage mixed use infill development, particularly downtown and in commercial nodes.

(10) Goal 5.4: Encourage design, construction, and maintenance of high quality housing.

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(11) Policy 5.4.2: Use transitional densities, design and landscape standards to ensure housing is compatible with existing character and planned goals.

VIII. Environmental Review. These applications were required to undergo State Environmental Policy Act (SEPA) review due to the requirements of a Planned Development. On August 6, 2021, the City's SEPA Responsible Official issued a Determination of Nonsignificance (DNS) which was not appealed.

IX. Transportation Concurrency Ordinance. The applicant applied for Transportation Concurrency review on March 26, 2021 (TCO#007-21). It was approved for Concurrency on August 23, 2021, based on a finding that the traffic resulting from the development would not exceed the PM peak hour capacity of the City arterial system and reserve capacity exists on all impacted streets.

X. Applicants' Statement of Details Relative to the Proposed Planned Development. Pursuant to YMC §15.28.030, the applicants' narrative for the Planned Development application provides answers set forth in italics below to specific questions relative to the proposal as follows:

(1) What land uses are proposed? *Proposed land uses are seven duplexes and yet undetermined commercial land use. It is anticipated that the commercial use will be typical of the General Commercial zoning district, although the size, location, access limitations and other characteristics will tend to limit the use of the site to commercial land uses of a more compatible neighborhood commercial nature. As proposed, the development agreement will also limit minor modifications in the manner required by YMC 15.28.080. This includes no substantial increase in area for a particular land use, no material changes in the type or*

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character of approved land uses or material impacts on the overall design of the approved master plan.

The application is being made as a Mixed-use planned development under YMC 15.28.020 (A)(4) based on mixed use planned developments being permitted in the R-1 zone (YMC 15.28.020(A)) and the proposed commercial lot size exceeding the 10% limitation for nonresidential land uses in residential planned developments (YMC 15.28.020(C)(2))¹.

The mixed-use category is appropriate to this site because commercial use of the corner of 96th Avenue and Tieton Drive is consistent with commercial zoning of the other corners and is more compatible with this signalized intersection. As such, it is designed in harmony with the overall site plan and does not significantly impact adjoining properties and development. It provides flexibility in design, concept and usage that meets the needs of the community and marketplace (YMC 15.28.020(B)(3)).

¹*This limitation is characterized as a factor that the hearing examiner should **take into consideration** when authorizing additional land uses (YMC 15.28.020(C)). This suggests that it is not necessarily mandatory in a residential planned development. [emphasis by the applicant]*

(2) Will the land be subdivided? If so, what type of subdivision? (Long Plat, Short Plat, Binding Site Plan, etc.) *The eight lots will be created by short subdivision, although it is also possible to reconfigure the three existing parcels.*

(3) How does the proposed Planned Development allow flexibility in development standards and permitted uses while ensuring compatibility with neighboring uses? *Revised street improvement standards are intended to develop a narrower street providing a smaller scale character to the proposed neighborhood and to make more of the site available for residential use. As a private residential street and not a through street, it will have low speeds and traffic levels. A single sidewalk is to be provided for pedestrian access. The slope of the proposed street is necessary to accommodate existing topography. The commercial site is intended to provide for mixed use and to make use of a corner on a busy intersection that is less desirable for residential use. Since the other corners of the intersection are now zoned commercial, the use of this property should be generally compatible with surrounding properties. The commercial lot will have direct frontage and access on to the adjoining arterial streets and will*

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not utilize the neighborhood street for access except where it enters the site at the commercial lot.

(4) Describe how the proposed Planned Development facilitates the efficient use of the land. *Because of its topography, this is a relatively difficult site to develop. The narrower street configuration provides for efficient use of the site allowing more space for residential sites. Orientation of the residential and commercial land uses to the 96th Avenue / Tieton Drive intersection provides for a transition of land use intensity from the existing neighborhoods north and east of the site to the commercial site at the intersection. The slopes are a physical boundary between residential and commercial use of the site.*

(5) Describe how the proposed Planned Development increases economic feasibility (i.e., fostering efficient arrangement of land use, buildings, transportation systems, open space and utilities). *Duplexes are permitted as a Class 2 land use in the R-1 zoning district. Proposed lot sizes and lot widths conform to the minimum zoning standards and the residential lots conform to minimum lot coverage and building height standards. For the commercial lot, a modified lot coverage standard is proposed consistent with standards typically allowed for commercial use. The planned development and subdivision are efficiently laid out and consist of private vehicular circulation and residential lots.*

(6) How does the proposed Planned Development preserve or enhance natural amenities, features, shorelines and critical areas in the development of the site? *Site design provides for the topography of the site, generally consisting of two levels separated by a relatively steep slope. The slope will accommodate view lots and possibly daylight basements and forms a logical boundary between the residential area on the higher part of the site and the commercial area fronting on the signalized intersection. No common open space is proposed because lot sizes are sufficient for private yards. There are no shorelines or critical areas on or in proximity to the site.*

(7) Identify environmental impacts and appropriate mitigation measures. *SEPA review has not been completed and significant environmental impacts have not been identified. Some of the site considerations that are being made, based in part on meeting with the City Development Service Team, include locating site approaches with sufficient distance from the signalized intersection, designing the*

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interior street to reduce the potential for hazardously steep slopes coming into the approaches to City streets and accommodating a pressurized sewer main in 72nd Avenue in utility design. Design of the commercial and residential parts of the project to account for topography and orientation to the signalized arterial street intersection promotes compatibility among the land uses on the site and nearby neighborhoods.

(8) How does the proposed Planned Development encourage environmentally sustainable development? *The project will use "low-impact development" concepts defined as stormwater management and land development strategies that emphasize conservation and use of existing natural site features integrated with disturbed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in residential, commercial and industrial settings (YMC 15.02.020). Stormwater will be retained on-site and drainage and infiltration facilities. The proposal accommodates population growth within the urban growth area to the benefit of resource and sensitive lands farther out and to reduce sprawl.*

(9) What services and facilities are available to serve the property? Are those services adequate? *Available utilities include 8-inch sewer lines and 12-inch water lines in both Tieton Drive and 96th Avenue. Existing fire hydrants are on Tieton Drive in front of the proposed commercial lot and northwest of the site at the corner of 96th Avenue and Walnut Street. Also available are electric power, natural gas, cable television and telephone. The site is in the West Valley School District - Cottonwood Elementary School is about ½ mile away - and is served by City fire, police and emergency services.*

(10) Will the proposed development promote economic development, job creation, diversification or affordable housing? *With or without the Master Planned Development, the project provides economic development and construction jobs. The proposed housing adds to capacity currently needed in the community.*

(11) How does the proposed development create vibrant mixed-use neighborhoods, with a balance of housing, commercial, and recreational facilities? *The proposal, along with neighboring properties, provide a mix of housing and commercial opportunities to this area. The neighborhood to the north and east has*

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a combination of attached and detached single-family residences of both manufactured homes and homes of conventional construction with a few duplexes. There is a self-storage (residential mini storage) complex about 300 feet north of the site. Property to the east has older homes on larger lots north of Tieton Drive and newer duplexes and single-family residence on the south side of the street. The properties across 96th Avenue and Tieton Drive are commercially zoned parcels that are mostly undeveloped, with single-family homes and a few small businesses.

(12) How is the proposal consistent with goals, policies, and objectives of the Yakima Urban Area Comprehensive Plan? *Consistency with Plan goals and policies include the following:*

Policy 2.1.7. Allow new development only where adequate public services can be provided.

Policy 2.3.1. Provide for a wide variety of housing types within the city to meet the full range of housing needs for Yakima's evolving population.

Duplexes are allowed in appropriate residential zones provided that density standards are met (Policy 2.3.1.E) and are listed as a permitted use in the R-1 zone (Class 2 review – generally permitted). Pedestrian orientation is provided by the private access street. Lot size and home design provide usable open space on each lot.

The proposal preserves and enhances established residential neighborhoods (Policy 2.3.2) by providing housing units in an area already characterized by a mixture of housing types and that are compatible with them in character and design. Tieton Drive and 96th Avenue are served by public transit.

The private residential street is safe and walkable (Policy 2.3.3), ties into existing sidewalks on the arterial streets, and has good connections with transit access to schools, parks and commercial services.

The commercial lot can be allowed in a residential zone under Policy 2.3.6.

The proposal adds to the diversity of housing choices consistent with Goal 5.1.

The use of transitional densities to ensure compatibility is consistent with Policy 5.4.2. In this case the transition is from the existing neighbor-

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hood north and east to the somewhat higher residential density of the site and then to commercial at the intersection of 96th and Tieton.

(13) How does the proposed Planned Development utilize unique and innovative facilities that encourage the efficient and economical use of the land? *Development of the project to the topographic characteristics of the site using a modified, narrower street design encourages efficient and economical use of the land.*

(14) Does the proposed Planned Development promote a sound system for traffic and pedestrian circulation? Describe. *The small-scale private access street will provide a safe route for vehicles and pedestrians with a single sidewalk that connects to existing sidewalks and transit on 96th and Tieton. Sidewalks are continuous on both sides of Tieton Drive to the west, 96th Avenue to the north and south on 96th Avenue to Cottonwood School and beyond.*

(15) How does the proposed Planned Development promote open space and use of natural and/or developed amenities? *The project is being designed to physical characteristics of the site, which is made up of two levels separated by a relatively steep slope. This provides for residential views and a physical boundary between the residential and commercial elements of the development, the latter which is oriented to the arterial street intersection. Private yards are being provided on each residential lot.*

(16) Will the proposed Planned Development provide an architecturally attractive, durable and energy efficient development? *Residential buildings will be similar in look, but varied in part to account for lot slope and configuration. A mix of exterior surfaces and colors that are compatible with the surrounding neighborhoods will be used. They are being designed to conform to current building codes and the Washington State Energy Code. All City setback, lot coverage, lot size and lot width standards are to be met on the residential lots.*

(17) Please provide a summary of all previously known land use decisions affecting the applicant's property and all outstanding conditions of approval with respect to such prior land use decisions. *Review of public records did not uncover any previous land use decisions affecting this property. It is not part of a plat or*

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short subdivision and Yakima County Assessor's records show no segregation or merge transactions recorded in their system.

(18) Any other development standards proposed to be modified from the underlying zoning district requirements. *Underlying zoning district standards being reduced by this application other than private road construction standards are focused on the commercial lot. A lot coverage standard of 100% is proposed, typical of commercially zoned areas in the City. This addresses the need for additional impervious surfaces such as parking and for less open space. Sitescreening standards are to be modified to take into account the topographic characteristics.*

Private roads are allowed in master planned development overlays by YMC 15.09.100. The proposal conforms to private road standards with the following exceptions:

a. YMC 15.09.100(A) requires the private road to be constructed to the minimum standards of the jurisdiction. The minimum standards are in Title 12 and the fire apparatus road standards required by YMC 15.05.055. Deviation from these minimums are described below.

b. Deviation from Title 12 standards for private roads (YMC 12.06.090) include easement width of 40 feet rather than 50 feet, pavement width of 24 feet, sidewalk on one side of the street (YMC 12.05.010) and decorative street lights that may not entirely meet the design standards of the City engineer (YMC 12.06.080).

c. Slopes exceeding 10 percent on the private street are proposed to accommodate the topography of this site. While this slope standard is given as a maximum for fire apparatus roads, the fire official may authorize it to be exceeded in some instances. On this basis, if such authorization is given, it would presumably not be a deviation from YMC 15.05.055, which does not specifically require this standard.

A modified lot coverage standard of 100% is proposed for the commercial lot only, consistent with the standard for the General Commercial zone. Parking lot landscaping and stormwater control will probably reduce lot coverage in the commercial lot to below this maximum.

The modified lot coverage standard is consistent with that required in commercial areas and the intent of lot coverage in commercial districts to

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promote development consistent with the character of the district, protect setbacks and integrate open space, landscaping and off-street parking because the latter improvements will be required under other code provisions not being modified. The standard is consistent with the intent of lot coverage in the R-1 zone to protect the open character of the district with setbacks and other design characteristics that promote compatibility between commercial and residential elements of this proposal.

Modified sitescreeing requirements between the commercial and residential lots are to allow residential fences to meet the normally required Standard 'C' requirement under YMC 15.07. Deviations would be from YMC 15.07.020, which for commercial land use, requires sitescreeing along a property line shared with a vacant parcel in the R-1 zone, from YMC 15.07.100, that requires sitescreeing to be completed prior to occupancy or commencement of use and from YMC 15.07.070(1) requiring sitescreeing to be located on the property line because due to the slope, residential fences may not be directly on the property line. For Lot 7, the fence may be located across the private street from and above the east line of the commercial lot.

The modification to the sitescreeing standard would allow residential fences to be constructed as the residential lots are developed. This is to accommodate the slopes between the commercial site and residential lots and in that manner to meet the purpose of sitescreeing to provide a visual buffer between land uses of different intensity. This purpose is being met because of the effect that the slope has on standard sitescreeing requirements. Sitescreeing is not necessary to reduce erosion and stormwater runoff because this will be accomplished for this site by other required measures.

(19) What are the aesthetic considerations related to building bulk, architectural compatibility, light and glare, urban design, solar access and shadow impacts? Residential buildings are designed to be architecturally compatible with surrounding neighborhoods. The commercial lot would be compatible with commercially zoned properties at the 96th and Tieton Drive intersection. None of the existing zoning district standards for bulk, light and glare are being reduced in the residential lots. Proposed building height is 35 feet and with setbacks and topographic characteristics (same general elevation as surrounding areas) no adverse solar access issues are expected. Because the commercial lot is at a lower

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elevation than the residential neighborhoods, this should not pose adverse solar access issues.

(20) Please provide an inventory of any on-site cultural, historic and/or archaeological resources. *Review of public records available from the Department of Archaeology and Historical Preservation showed no inventoried resources on the project site.*

XI. Applicants' Statement of Details Relative to the Class (2) Duplex

Uses. Pursuant to YMC §15.14.030, the applicants' narrative for the application for approval of Class (2) duplex uses provides answers set forth in italics below to specific questions relative to the proposal:

(1) Fully describe the proposed development, including number of dwelling units and parking spaces. If the proposal is for a business, describe hours of operation, days per week and all other relevant information related to the business. *This Type 2 review application is to authorize the development of 14 duplexes in the R-1 zone. Off-street parking on each residential lot is to provide a minimum of two parking spaces per unit, or four spaces per lot for a total of at least 28 parking spaces.*

(2) How is the proposal compatible to neighboring properties? *Residential use of neighboring properties is a mixture of attached and detached single-family residences and duplexes, with single-family dwellings predominant. The proposed development provides a transition from the adjoining neighborhood to the commercial land use and zoning at the intersection of 95th [96th] Avenue and Tieton Drive. It is to be served by its own private street with no direct connection to the surrounding lower density areas.*

(3) What mitigation measures are proposed to promote compatibility? *Duplexes designed to be similar in look but varied with a mix of exteriors and colors that are compatible with surrounding neighborhoods. R-1 zoning standards*

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are being followed, including standards that have the most effect on compatibility – building height, residential setbacks and lot coverage.

(4) How is your proposal consistent with current zoning of your property? *This proposal is consistent with the intent of the Single-Family Residential zone to establish residential neighborhoods for detached single-family dwellings free from other uses except those which are compatible with, and serve the residents, which may include duplexes if established during the subdivision process (YMC 15.03.020(B)). A private street is to be provided to allow for access from individual lots as a better alternative to using the arterial streets for access that, in this instance, are the only City streets available to the site.*

(5) How is your proposal consistent with uses and zoning of neighboring properties? *Surrounding properties are Suburban Residential to the north and east and B-2, Local Business to the south and west. There are also higher density R-2 and R-3 zoned areas farther to the west and northwest and to the southeast across Tieton Drive. The proposal is consistent with the residential use and densities of the surrounding residential areas.*

Compatibility with the commercially zoned areas is being addressed by the planned commercial use of a new proposed lot at the intersection of the two major adjoining streets, an action that is not part of this Type 2 review. The commercial lot along with the different elevations that characterize the project site provide for a transition from the commercial zoned lands across the street and the busy intersection to the proposed duplex development. The transition continues to the lower density residential areas to the north and east which are characterized by a mixture of residential construction including attached and detached single-family residences of both manufactured homes and homes of conventional construction with a few duplexes, a self-storage (residential mini storage) complex about 300 feet north of the site, older homes on larger lots on the north side of Tieton Drive and newer duplexes and single-family residence on the south side of the street.

(6) How is your proposal in the best interest of the community? *The proposed housing is consistent with comprehensive plan policies to provide for a wide variety of housing types within the city to meet the full range of housing needs for Yakima's evolving population, encourage diverse and affordable housing choices throughout the City, convenient access to transit and a range of unit types.*

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XII. Development Services Team and Interested Agency Comments. The following comments were submitted by the Development Services Team as a result of its review conducted on June 8, 2021, and by the other public agencies which submitted information regarding this proposal:

(1) Code Administration:

(a) Preliminary addressing for the plat is as follows:

Lot 1	413 S. 96th Avenue #1-2	Lot 5	421 S. 96th Avenue #1-2
Lot 2	415 S. 96th Avenue #1-2	Lot 6	9505 Tieton Drive #1-2
Lot 3	417 S. 96th Avenue #1-2	Lot 7	9503 Tieton Drive #1-2
Lot 4	419 S. 96th Avenue #1-2	Lot 8	9515 Tieton Drive

(b) Payment of applicable Wastewater connection fees must be paid pursuant to YMC 7.58.

(c) Any work to be performed in City right-of-way requires an Excavation permit from City Engineering prior to commencing work (YMC 8.72).

(2) Engineering: This project requires Title 8 and 12 improvements, including but not limited to the following:

(a) 12.02 Easements shall be established per this chapter.

(b) 12.02 – Private streets shall be constructed with curbs, sidewalks, and street lighting and shall otherwise conform to the standards for public streets.

(c) 12.06.020 – Right of way – Tieton Drive is classified as Minor Arterial requiring a total of 80 feet of right of way (40 feet half width). Adequate right of way shall be dedicated if necessary to provide for 40 feet width from centerline of right of way along frontage. South 96th Avenue is classified as a Collector Arterial requiring a total of 60 feet of right of way (30 feet half width). Adequate right of way shall be dedicated if necessary to provide for 30 feet width from centerline of right of way along frontage.

(d) YMC 15.06.065 – Driveway access shall be limited in the vicinity of a signalized street intersection. No driveway shall be permitted

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within one hundred feet of a signalized intersection, as measured from the right-of-way line. Any driveway within two hundred feet of the right-of-way line of the intersection shall be restricted to right turns only.

(c) YMC 8.67 and 12.05 – Where existing driveways are not utilized, they shall be removed, and new curb, gutter and sidewalk shall be installed. New sidewalks shall be constructed per standard detail R5. Any existing curb, gutter along frontage that is unfit or unsafe shall also be repaired/replaced.

(f) YMC 8.72 – An excavation and street break permit shall be obtained for all work within the public right of way.

(g) All improvements and shall be completed prior to Certificate of Occupancy.

(3) Nob Hill Water Association: The owner will need to submit finalized engineered plans for site. Design and cost estimate will be needed to supply new development. Owner will need to call Nob Hill Water.

(4) Surface Water:

(a) If this project involves clearing or grading one acre or more, a Large Project Stormwater Permit shall be required from the applicant. The requirements of a Large Project Stormwater Permit are:

- (i) Drainage plan(s) and calculations;
- (ii) Stormwater maintenance agreement and plan;
- (iii) Proof that the maintenance agreement was recorded in the Yakima County Auditor's Office
- (iv) Construction Stormwater Pollution Prevention Plan (SWPPP) or Erosivity Waiver. The Construction SWPPP (or Erosivity Waiver Certificate Statement) shall be reviewed and approved by the Surface Water Engineer prior to any grading or construction. A Temporary Erosion and Sediment Control (TESC) plan shall be submitted for approval.

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(v) In lieu of turning in a Construction Stormwater Pollution Prevention Plan, the applicant can satisfy this requirement by obtaining a Construction Stormwater General Permit through the Washington State Department of Ecology. A copy of the signed General Permit shall be delivered to the Surface Water Engineer.

(vi) A narrative explaining how Core Elements 1-8 are being satisfied.

(vii) An operation and maintenance plan for the perpetual maintenance of the facilities is now required.

(b) Grading and/or building permits shall not be issued without the project site first passing an erosion control inspection.

(c) Complete stormwater design plans, specifications and runoff/storage calculations supporting the stormwater design are required pursuant to the Eastern Washington Stormwater Manual and City of Yakima standards. These plans and control measures must be completed by a licensed Professional Engineer and then be reviewed and approved by the City of Yakima Surface Water Engineer prior to construction.

(d) UIC Registration – Stormwater:

(i) In accordance with the August 2019 edition of the Department of Ecology's Stormwater Management Manual for Eastern Washington (SMMEW), Underground Injection Control (UIC) wells constructed on or after February 3, 2006 are considered new and must be registered with the Department of Ecology (DOE) 60 days prior to construction. UIC wells that receive polluted runoff shall retain the larger of the 100-year 3-hour and 100-year 24-hour storms and shall be designed for treatment using Table 5.23 of the SMMEW.

(ii) If the clearing and grading is less than one acre then a drainage report shall be required for the project. The report shall be prepared by a licensed engineer in Washington State for review by the Surface Water Engineer. All stormwater runoff up to the 25-year storm shall be retained and infiltrated on site.

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(5) Wastewater: Proposed sewer extension will need to be submitted per Title 12 requirements. There is a City of Yakima Wastewater Lift Station on the southwest corner of the lot. The access for this Lift Station will need to be maintained. The associated ENG permit will need to show the lift station limits and call out existing easements.

(6) Yakima-Tieton Irrigation District: Parcel 181319-33005 is within the Yakima-Tieton Irrigation District boundary and has a permanent easement on the above parcel so they will need to show the easement on plat map. They will need to follow our Resolution 97-5.

(7) Department of Archaeology & Historic Preservation:

(a) Thank you for contacting the Washington State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) and providing documentation regarding the above referenced project. Our statewide predictive model indicates that there is a high probability of encountering cultural resources within the proposed project area. Further, the scale of the proposed ground disturbing actions would destroy any archaeological resources present. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. Therefore, we recommend a professional archaeological survey of the project area be conducted prior to ground disturbing activities. We also recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.

(b) These comments are based on the information available at the time of this review and on behalf of the SHPO in conformance with Washington State law. Should additional information become available, our assessment may be revised.

(c) Thank you for the opportunity to comment on this project and we look forward to receiving the survey report. Please ensure that the DAHP Project Number (a.k.a. Project Tracking Code) is shared with any hired cultural resource consultants and is attached to any communications or submitted reports. Should you have any questions, please feel free to contact me.

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XIII. Public Comments Relative to the Proposal. The public notice was sent out on May 28, 2021. As of the September 9, 2021, hearing a total of four public comments from residents of the area were received. Three of them were identical letters from the residents of two properties adjacent to the proposal on the north and one property across the street to the north of those two properties. Those comments in italics which are slightly edited in the Planning Division staff report and which are followed by the staff responses are as follows:

(1) I have questions and comments concerning this review. Why didn't I receive a copy of this form? I had to borrow it from my neighbor who lives across our shared driveway. **Staff Response:** Public notice is mailed to property owners within 300 feet of the subject property, and your property is located just outside of that radius.

(2) I noticed 2 errors in their Environmental Checklist form. On page 8, section 4 Plants, they checked only grass and weeds are present. However, there is one Evergreen tree that's about 60 to 100 feet tall. There is also 4 or more Deciduous trees 20 to 40 feet tall along with several Juniper bushes. On page 11, section 9 Housing, part a, it asks about a number of units and the price range of them. They listed the number of units (14) but did not state whether they were going to be high, middle, or low-income housing. **Staff Response:** The Urban Area Zoning Ordinance does not regulate housing based on income and does not affect the Planning Division's recommendation.

(3) First of all, 14 housing units, at least 28 vehicles, and upwards of 50 people living on 1.3 acres of land cannot possibly be considered "low density." This proposal is completely incompatible with the quiet, rural, single-family residences surrounding this property. **Staff Response:** Each lot exceeds the minimum lot size of 8,000 square feet required for a duplex in the R-1 zoning district.

Incorrect Statements:

(4) The applicant states that there are currently "a few small businesses" on the properties at the intersection of Tieton Drive and 96th Avenue. There are NO businesses on those properties; there are single-family homes on the

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northwest and southwest corners, and a pasture on the southeast corner. Staff Response: The three other corners of the intersection at which the subject property is located are all zoned Local Business (B-2). The northwest corner recently underwent land use review (CL1#052-21 / SEPA#006-21) and was approved for a commercial development.

(5) The applicant states that Sidewalks are continuous on both sides of Tieton Drive to the west. The sidewalks on Tieton Drive end at the intersection with 96th Avenue and do not extend any further to the west. Staff Response: There is existing sidewalk on both sides of Tieton Dr. along the subject property's frontage.

(6) On Page 11 of the Environmental Checklist, #10, Aesthetics, b. What views in the immediate vicinity would be altered or obstructed?, the applicant states that "New buildings erected next to neighboring properties to the north and east, although the difference in elevation is not substantial". Our property elevation is approximately 10' lower than the proposed development's property elevation. The applicant states that "no soul will be removed from the property". When you erect a 35' tall building on top of that, we are pretty sure that our view to the south will not only be altered, but completely obliterated. We consider a 45' difference in elevation quite "substantial." Staff Response: While the Environmental Checklist asks about view changes, the zoning ordinance does not regulate or protect views between properties.

(7) On Page 12 of the Environmental Checklist, #13, Historic and Cultural Preservation, a. Are there any buildings, structures, or sites, located on or near the site.....". The applicant states "No". There is an underground bunker at the base of the steep slope, approximately in the center of the proposed development site. The structure could contain contaminates and/or hazardous materials that may have been stored there when the property was previously used for agricultural purposes. Staff Response: No comments were received from the Washington State Department of Ecology.

Questions:

(8) Is Lot 8 (the proposed "commercial" lot) currently zoned for commercial use? Staff Response: Lot 8 is not currently zoned commercial nor is it proposed to be rezoned. A Master Planned Development Overlay allows for commercial uses regardless of the underlying zoning district.

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(9) *How can duplexes be considered "single-family dwellings" when, by design, they are meant to house 2 families side by side?* Staff Response: The preliminary plat application was marked "single-family dwellings" rather than "two-family dwellings," but the rest of the application references duplexes as the proposed housing type.

(10) *We strongly question the need for additional housing capacity in the West Valley area when there are currently dozens of single and multi-unit housing developments underway throughout the West Valley area.* Staff Response: The City of Yakima Housing Action Plan (HAP), finalized in June 2021, determined that vacancy rates for both rentals and homes for sale are below 1 percent, that median housing prices are rising twice as fast as median incomes, and that more than a third of households are cost burdened. In order for Yakima to achieve a healthy vacancy rate of 5 percent, 295 dwelling units need to be built annually through 2040. Most housing capacity is located in the western part of the city.

Concerns:

(11) *Our biggest concern is the complete loss of privacy for ourselves and the surrounding neighbors. The tenants in the proposed new buildings will be able to look directly into our backyards and our southern-facing windows. To mitigate this concern, we are requesting: (a) That the building height for the proposed new structures be limited to 20'; and/or (b) That the developer be required to install privacy fencing along the northern border of their development tall enough to maintain our existing level of privacy.* Staff Response: The planned development only proposes to modify sitescreeing requirements by delaying their installation along the commercial portion of the development. Sitscreeing Standard A (or a higher standard) shall be installed along the northern and eastern property lines of the development.

(12) *The nature of the proposed business to be located on Lot 8 is not disclosed in these documents. If this proposal is approved and a business is allowed to open and operate at the intersection, will we be notified prior to the establishment of the business and will we be able to comment on the proposed business?* Staff Response: The planned development proposes to limit the commercial lot to Class (1), (2), and (3) uses permitted in the General Commercial (GC) zoning district, and will be reviewed as such. Class (1) uses generally require Type (1) Review, which is an administrative decision, Class (2) uses generally require Type (2) Review, which is an administrative decision with a public notice

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and comment period, and Class (3) uses require Type (3) Review, which is an administrative recommendation with a public notice, comment period, public hearing, and decision by the Hearing Examiner.

(13) In closing, we cannot overstate how strongly we are opposed to this multi-family/commercial development, as proposed. It would completely disrupt our current, long-established, quiet, safe, low density population neighborhood.

XIV. Applicable City Ordinance Provisions Relative to the Proposed

Planned Development. City ordinance provisions which are applicable to the proposed Planned Development include the following:

(1) YMC §15.28.010(A): Purpose: A master planned development overlay (PD) is a comprehensive development plan intended to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and/or dwelling types, provide for economy of shared services and facilities, and economically utilize the land, resources, and amenities.

(2) YMC §15.28.025: Minimum Project Size: The minimum project size for a master planned development shall be two acres. All properties included in the master development plan shall be contiguous with logical outer boundaries.

(3) YMC §15.28.050: Development Agreement: An approved master planned development overlay (including conditions and development standards) shall be incorporated into a development agreement as authorized by RCW 36.70B.170. The development agreement shall provide for vesting of such development conditions and standards as are deemed reasonable and necessary to accomplish the goals of the master planned development. This agreement shall be binding on all property owners within the master planned development and their successors and shall require that development of the subject property be consistent with and implement the provisions of the approved master planned development. The approved development agreement shall be signed by the city manager and all property owners and lienholders within the boundaries of the master planned development overlay and recorded prior to approval and/or issue of any implementing plats or permits.

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(4) YMC §15.28.070(A):Vesting: The master planned development review shall be vested to development regulations, standards, conditions, and laws applicable at the time the development agreement described in YMC §15.28.050 is recorded, inclusive of specific conditions and standards set forth in said development agreement. The vesting period shall be for the time stated in the development agreement associated with each specific master planned development and shall be agreed upon by the parties to the development agreement after giving consideration to the extent and complexity of the proposed development as well as specific development planning considerations raised by the developer. During the stated vesting period the applicant shall be entitled to implement the master planned development in accordance with the terms and conditions of approval described in the development agreement.

(5) YMC §15.09.100(H): Private Street Review Requirements: The face of any plat, short plat, master development plan, binding site plan, or condominium document containing a private road, and all subsequent documents transferring ownership of lots within such plat or short plat, shall bear the following language:

"The City of Yakima has no responsibility to build, improve, maintain or otherwise service any private road for this plat/short plat. Any right-of-way dedicated to the public by this plat/short plat shall not be opened as a City (or County) street until such time as it is improved to city street standards and accepted as part of the City transportation system."

XV. City Ordinance Provisions Applicable to the Seven Proposed Class

(2) Duplex Uses. City of Yakima ordinance provisions which are applicable to the seven proposed Class (2) duplex uses include the following:

(1) YMC §15.04.020(B): Class (2) Land Use Defined: Pursuant to YMC §15.04.020(B), Class (2) uses are generally permitted in the district. However, the compatibility between a Class (2) use and the surrounding environment cannot be determined in advance, and occasionally a Class (2) use may be incompatible at a particular location. Therefore, a Type (2) review by the administrative official is required in order to promote compatibility with the intent and character of the district and the policies and development criteria of the Yakima urban area

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comprehensive plan. The procedures in YMC Chapter 15.14 shall be used to review and evaluate Class (2) uses. In certain circumstances, the administrative official may require that a Class (2) use undergo a Type (3) review, as provided within this title.

(2) YMC §15.14.020: Type (2) Review: Type (2) Review is required for any proposed use shown on Table 4-1 as a Class (2) use, for Class (1) uses requiring Type (2) review in YMC §15.13.020; and for other specific reviews established by this title.

(3) YMC §15.02.020: Compatibility Defined: "Compatibility" means the characteristics of different uses or developments that permit them to be located near each other in harmony with or without special mitigation measures.

(4) YMC §15.10.020: Dwelling, Two-Family Defined: "Dwelling, two-family" means a structure designed exclusively for occupancy by two families living independently of each other and containing two attached dwelling units on the same lot. This definition includes the term "duplex."

(5) Parking Spaces Required: YMC Table 6-1 in YMC §15.06.040 requires two-family dwellings or duplexes to have two spaces per unit or a total of four spaces.

(6) Sitescreening: Table 7-1 in YMC §15.07.050 requires Standard A (or a higher standard) to be installed along the rear property lines of the duplexes abutting the adjacent single-family lots along the north and east property lines of the boundaries of the Master Planned Development overlay, and also along the rear property lines of the duplexes abutting Lot 8 within the overlay.

(7) Sitescreening Standard A: Sitescreening Standard A consists of a ten-foot-wide landscaped planting strip with trees at twenty-foot to thirty-foot centers, which includes shrubs and groundcover. The administrative official may also require Sitescreening Standard A along an arterial when such action is consistent with the purpose of YMC Chapter 15.07.

(8) Sitescreening Standard B: Sitescreening Standard B consists of a three-foot-wide planting strip that will create a living evergreen screen that is at least six feet in height within three years.

(9) Sitescreening Standard C: Sitescreening Standard C consists of a six-foot-high, view-obscuring fence, made of wood, masonry block, concrete, or

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slatted chain link material. A three-foot-wide planting strip landscaped with a combination of trees, shrubs and groundcover along the outside of the fence is also required when the fence is adjacent to a street, alley or pedestrian way.

(10) Lot Coverage: When developed, each duplex lot shall not exceed the lot coverage limitation of not more than 60% in the Single-Family Residential (R-1) zoning district.

XVI. Applicable City Ordinance Provisions and State Statutory Provisions Relative to the Proposed 8-Lot Preliminary Short Plat. City

of Yakima ordinance provisions and State statutory provisions which are applicable to the proposed 8-Lot Preliminary Short Plat which by virtue of YMC §14.15.020(B) and §14.15.050 are similar to the requirements for Preliminary Long Plats include the following:

(1) YMC §15.05.030(A): Creation of new lots – Subdivision requirements: Table of Subdivision Requirements: Pursuant to YMC §15.05.030(A), the Table establishes basic development criteria for lot size and width that must be met when reviewing an application for a new subdivision. For two-family dwelling construction in the R-1 zoning district, the required minimum lot size is 8,000 square feet, while for permitted non-residential uses the required minimum lot size is 10,000 square feet.

(2) YMC §15.05.055(1): New development improvement standards: Fire apparatus access roads for multiple-family residential developments and one- or two-family residential developments shall be subject to the provisions of Sections D106 and D107, respectively, of Appendix D of the International Fire Code (2009 Edition). Additionally, such residential developments shall be subject to the requirements of Section D105 of Appendix D, International Fire Code (2009 Edition), pertaining to aerial fire apparatus roads, as applicable. All provisions of the International Fire Code referenced above are hereby adopted and incorporated herein by this reference, as now existing or as hereafter amended and adopted by the city. Minimum requirements for the primary and secondary access will be at least twenty-foot-wide, unobstructed, paved lanes.

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(3) YMC §12.02.010: Establishment of easements: Public utility easements shall be established for the location of new and proposed public utility lines serving new land divisions and land development. Public utility easements shall also be established across the front of new lots and redeveloped lots to provide future utility access as determined necessary by the city engineer. Public utility easements shall be dedicated (granted) at the time that subdivision and/or land use approval is granted.

(4) YMC §12.02.020: Easement location and width: Eight-foot-wide utility easements shall be dedicated along the front of each lot in subdivisions and short subdivisions. Easements for new and/or future utility lines shall be a minimum of eight feet in width, or twice the buried depth of the utility, whichever is greater.

(5) YMC §12.03.010: Sewer service required: YMC §12.03.010 requires all new lots and developments to be served by a sanitary sewer line located adjacent to the lot or development site.

(6) YMC §12.03.040: Minimum sewer size: The minimum size for public sewer lines is eight inches in diameter.

(7) YMC §12.03.070: Side sewer service: Each building containing sanitary facilities shall be served by a separate private side sewer line from a public main. Branched side sewers serving multiple buildings and properties shall not be permitted. Single side sewers serving multi-unit buildings are permitted.

(8) YMC §12.03.090: Gravity flow required: Sewer lines shall be designed for gravity flow operation. Lift stations and force mains (pressurized lines) shall be limited to those locations and circumstances where they are consistent with the comprehensive sewer plan and are the preferable short-term solution to service of the development site and other properties in the vicinity.

(9) YMC §12.04.010: Water service required: All new lots and development shall be served by a public water supply line maintained by the city of Yakima, Nob Hill Water Company, or other water purveyor, and located adjacent to the lot or development site. The water line shall be capable of providing sufficient flow and pressure to satisfy the fire flow and domestic service requirements of the proposed lots and development as approved by the city engineer in cooperation with the code administration manager and water irrigation division manager.

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(10) YMC §12.04.020: Water line extension required: Water lines shall be extended to the point where the adjoining property owner's responsibility for further extension begins. This typically requires extension across the street or easement frontage of the developing property. In some cases it will require dedication of an easement and a line extension across the property or extension along two or more sides of the developing property. Extensions will be consistent with and implement the city's adopted water comprehensive plan.

(11) YMC §12.04.040: Minimum size and material standards: New water lines in the city of Yakima water system shall be constructed of Class 52 ductile iron and shall be a minimum of eight inches in diameter. Improvements and additions to the Nob Hill Water Company system shall conform to the requirements of the Nob Hill Water Company.

(12) YMC §12.05.010: Sidewalk installation required: Sidewalks shall be installed along both sides of all new, improved, and reconstructed streets. Projects which repair small portions of or maintain existing street shall not be considered "improvement" for the purpose of this section and shall not trigger the requirements of this section. Sidewalks shall also be installed across the frontage of all newly developed or redeveloped lots where feasible.

(13) YMC §12.06.010: Street types, functional classification: The Yakima urban area comprehensive plan, and/or the West Valley neighborhood plan, designates the functional classification of the principal arterial, minor arterial and collector streets and establishes their functional classification. All other streets are classified as local residential access.

(14) YMC §12.06.030: Design standards, adjustment of standards: ... Final design of street improvements is subject to approval by the city engineer. The city engineer, at his discretion, is authorized to adjust these standards as necessary to facilitate the construction of new streets and improvement of existing streets. Projects which repair small portions of or maintain existing streets shall not be considered "improvements" for the purposes of this section.

(15) YMC §12.06.070: Provision of street curbing: Barrier curbs shall be installed along all public streets. Rolled mountable curbs may be permitted along residential access streets. Curb design shall be consistent with the standards of the city engineer.

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(16) YMC §12.06.080: Street lighting: A street light shall be installed at each street intersection and at mid block if the block exceeds five hundred feet in length. Street lights shall meet the design and placement standards of the city engineer. Lighting improvements shall become the property of the city of Yakima upon installation and will thereafter be maintained by the city.

(17) YMC §14.05.200 (A-B): Allowance of bond in lieu of actual construction of improvements prior to approval of short plat or final plat: The subdivision or short subdivision applicant may, as an alternative to actual construction of any required improvements, provide a surety bond or other secure method providing for and securing to the city the actual construction of required improvements within a specified period of time and expressed in a bond or other appropriate instrument establishing such security. Any bond or other method of securing actual construction of required improvements shall specify the improvements covered and the schedule for completion. In cases of subdivision, the bond or other method of securing actual construction of required improvements shall be subject to approval by the city engineer and city attorney prior to approval of the final plat by the city council. In cases of short subdivisions, the bond or other method of securing actual construction of required improvements shall be subject to approval by the city engineer and city attorney prior to approval of the final short plat by the administrator. In no case shall the amount of the bond or other method of securing actual construction of required improvements be less than one hundred ten percent of the estimated actual cost of the improvements based upon the approved civil engineering design of the required improvements.

(18) YMC §14.15.020(B) Short Plat Criteria: YMC §14.15.020(B) states, in language similar to RCW 58.17.110(1) and (2) applicable to long plats, that short subdivisions must appropriately provide for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school which are also features required by RCW 58.17.110(1). The administrator may determine that other considerations are appropriate to evaluate as criteria for approval.

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XVII. Master Planned Development Overlay Criteria and Findings.

The purpose of a Planned Development described in YMC Chapter 15.28 is to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and/or dwelling types, provide for economy of shared services and facilities, and economically utilize the land, resources and amenities. YMC §15.28.040(D) provides that the Hearing Examiner shall evaluate a Master Planned Development application and other evidence submitted into the record, and shall issue a recommendation to the City Council based upon the following considerations and criteria:

(1) Subsection 15.28.040(D)(1) -- The Master Planned Development application demonstrates the economic and efficient use of land and provides for an integrated and consistent development plan for the site. The residential nature of the proposed development that abuts existing single-family homes is consistent with the R-1 zoning district and the future land use designation of Low Density Residential. The planned development/subdivision design is efficiently laid out and consists of a private street, seven duplex lots, and a commercial lot.

(2) Subsection 15.28.040(D)(2) -- The applicant has identified development standards and uses that are consistent with the master plan and designed in a manner that is compatible with adjacent land uses after consideration of applicable mitigation and site design. The Hearing Examiner may consider development standards that are different from currently adopted development standards in order to provide flexibility in site planning; to implement project design and concepts; to respond to market conditions; or to otherwise achieve the public benefits contemplated by the concept plan. The modifications of street standards from 50 to 40 feet of right-of-way width with 24 feet of pavement width, with sidewalk on one side of the street, with possible slopes exceeding 10% and with possible street light modifications; the modification of the lot coverage allowed for the commercial lot of 100%; and modifications of the sitescreeing which is to be provided as each duplex is constructed which are all described above in Subsection (X)(18) are features that will provide flexibility while being compatible with the adjacent land uses.

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(3) Subsection 15.28.040(D)(3) -- Consideration shall be given to "low impact development" concepts. The duplex lots will exceed the minimum lot size of 8,000 square feet and will serve as a buffer between the existing single-family homes and the commercial lot which will have a lot coverage of up to 100 percent.

(4) Subsection 15.28.040(D)(4) -- There will be adequate infrastructure capacity available by the time each phase of development is completed. All lots will be served by City of Yakima sewer and Nob Hill Water Association water. There will be adequate transportation infrastructure, as noted in the Traffic Concurrency decision. The private road provides for an efficient traffic circulation pattern with no dead ends.

(5) Subsection 15.28.040(D)(5) -- The Master Planned Development contains design, landscaping, parking/traffic management, and use mixture and location that limit or mitigate conflicts between the Master Planned Development and adjacent uses. Consideration shall be given to site planning that supports land use flexibility through means of appropriate setbacks, landscaping, site screening, buffers, and other design features or techniques. The proposed lot sizes, lot width, and setbacks will allow the dwelling units to be situated in a low density manner, serving as a buffer from the commercial lot.

(6) Subsection 15.28.040(D)(6) -- All potential significant off-site impacts including noise, shading, glare, and traffic have been identified and mitigation incorporated to the extent reasonable and practical. There are not anticipated to be any significant off-site impacts. Each duplex will have its own parking. A SEPA Determination of Nonsignificance was issued on August 6, 2021, which was not appealed.

(7) Subsection 15.28.040(D)(7) -- The project is designed and includes appropriate consideration of open spaces and transportation corridors, designs of street and public open space amenities, and results in the functional and visual appearance of one integrated project. The development contains private open spaces located on the individual lots. The duplex lots will visually separate the commercial lot from the existing single-family homes north and east of the subject property.

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(8) Subsection 15.28.040(D)(8) -- The proposed project is not adverse to the public health, safety, or welfare. The development will not adversely affect the environs of the area, nor is it expected to cause any traffic concerns.

(9) Subsection 15.28.040(D)(9) -- The public benefits of approving the Master Planned Development outweigh the effect of modification of standards to the underlying zoning district. Approval of this Planned Development will provide for seven duplex lots. Lot sizes and lot widths will follow the standards of the R-1 zoning district. The additional residential housing will provide a benefit to the public that outweighs the effect of modification of standards relative primarily to the width of the private street which will be adequate for the seven duplexes.

(10) Subsection 15.28.040(D)(10) -- The proposed development is designed to be consistent with the provisions of the Shoreline Master Program and Critical Areas Ordinance of the City of Yakima. The subject property is not within a critical area. Environmental Review was required only due to the requirements for a Master Planned Development Overlay.

(11) Subsection 15.28.030(B)(5) -- The following elements set forth in Subsection 15.28.030(B)(5) of the YMC are properly addressed in a Development Agreement:

- (A) Narrative description of project and objectives;
- (B) Summary of development standards;
- (C) Site plan elements;
- (D) Development phasing, including times of performance to preserve vesting;
- (E) Public meeting summaries;
- (F) Performance standards and conditions addressing the above items;
- (G) Criteria for determining Major vs. Minor modifications and amendments; and
- (H) Signature(s) by each owner of property within the Master Development Plan area acknowledging that all owners will agree to be bound by conditions of approval, including use, design and layout, and development standards contained with an approved Plan and Development Agreement.

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One of the recommended conditions for approval of the proposed Planned Development would be the recording of a Development Agreement prior to final plat approval.

XVIII. Class (2) Duplex Use Criteria and Findings. Since a duplex is listed as a Class (2) use in the R-1 zoning district by YMC Table 4-1 in YMC §15.04.030, the Hearing Examiner's findings and conclusions relative to the proposed duplex use on seven of the lots within the Planned Development and the Preliminary Short Plat are required to include specific reasons and ordinance provisions demonstrating that the duplex uses satisfy all of the following Class (2) use requirements that are set forth in YMC §15.04.020(B), §15.14.040(G), §15.02.020 and the similar Type (3) Review criteria that are set forth in YMC §15.15.040(I):

(1) Compliance and Compatibility with the Objectives and Development Standards of the Comprehensive Plan. The proposed duplex uses would be compliant and compatible with Comprehensive Plan Goals 2.1, 2.3, 5.1 and 5.4 as well as Policies 2.1.7, 2.3.1, 2.3.1(E), 2.3.3, 2.3.6, 5.1.3 and 5.4.2 as described above in Section VII of these recommendations.

(2) Compliance and Compatibility with the Intent and Character of the Single-Family (R-1) Zoning District. The proposed 7 duplexes on a 2.03-acre parcel would be compliant and compatible with the intent of the Single-Family Residential (R-1) zoning district which in YMC §15.03.020(B) allows duplexes if established during the subdivision process. The proposed duplexes would also be compliant and compatible with the intent of the Single-Family Residential (R-1) zoning district because YMC Table 4-1 in YMC §15.04.030 allows duplexes as Class (2) uses that are generally permitted in that zone. The duplexes would be compliant and compatible with the character of the R-1 zoning district which is developed with residential uses in all directions. The concerns expressed by written comments of two adjacent property owners on the north are understandable and not unusual when two-story residential uses are proposed for

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adjacent property, but the testimony at the hearing indicated that the development site may be graded to allow for the street slopes to be passable in all types of weather which to some extent may lower the elevation of the site next to the north side of the property. The testimony at the hearing also favored approval of the proposal for many reasons and the staff report correctly responded to concerns expressed by the written comments.

(3) Compliance with the Provisions and Standards Established in the Zoning Ordinance. Provisions and standards in the zoning ordinance applicable to the duplexes include those detailed above in the comments of the Development Services Team, detailed above in Section XV of these recommendations and detailed below in Subsection XIX(1)(b) of these recommendations.

XIX. Preliminary Short Plat Criteria and Findings. YMC §14.15.050 and YMC §14.15.060 require that in reaching a decision whether to approve or disapprove short subdivisions, a determination shall be made as to whether the zoning ordinance requirements of YMC Title 15 have been satisfied and whether the short subdivision is consistent with the standards of the zoning ordinance and the Comprehensive Plan. YMC §14.15.020(B) requires that the proposed short subdivision appropriately provides for features similar to those required by YMC Chapter 14.20 and RCW 58.17.110(1) and (2) relative to long plats. The Hearing Examiner's findings as to such criteria are as follows:

(1) Consistency with the City's Urban Area Zoning Ordinance Improvement and Development Provisions Applicable to the R-1 Zoning District. A determination as to the consistency with the City's Urban Area Zoning Ordinance design, improvement and development provisions applicable to the R-1 zoning district involves a consideration of the following provisions of Title 15 and Title 12 of the Yakima Municipal Code (YMC):

(a) Consistency with the Intent of the R-1 Single-Family Residential Zoning District: YMC §15.03.020(B) indicates that the intent of the R-1

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zoning district is in part to allow duplexes established during the subdivision process.

(b) Consistency with the Design, Improvement and Development Provisions Applicable to the Single-family Residential (R-1) Zoning District: YMC Chapter 15.05 establishes development standards which may be varied in a Short Plat that is processed in conjunction with a Planned Development. Proposed development standards applicable to this Short Plat and Planned Development include the following:

(i) *Minimum Lot Size:* The minimum lot size for a duplex in the R-1 zoning district is 8,000 square feet. Here the lot sizes for the duplexes range from 9,404 square feet to 10,063 square feet and the commercial lot is 19,576 square feet.

(ii) *Minimum Lot Width:* The lots will all meet or exceed the minimum lot width of 50 feet prescribed for the R-1 zoning district by YMC Table 5-2 and YMC §15.05.030(A).

(iii) *Maximum Lot Coverage:* The maximum lot coverage is the percentage of net land area of a site that can be covered with structures and other impervious surfaces. In the R-1 zoning district, the maximum lot coverage prescribed by YMC Table 5-1 in YMC Chapter 15.05 is 60%. All residential lots within the proposed preliminary plat have sufficient lot area to comply with this 60% maximum lot coverage development standard. The commercial lot is proposed to allow the 100% lot coverage that is applicable to some commercial zones as one of the revised standards to be allowed in the Planned Development.

(iv) *Structure Setbacks:* The following setbacks are required for the Planned Development unless different setbacks are allowed by the Development Agreement:

Location	From Centerline of Right-of-Way	From the Property Line
Front, private road	37.5 feet	20 feet
Front, Tieton Drive	60 feet	20 feet
Rear	N/A	15 feet

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Side, South 96 th Avenue	50 feet	10 feet
Side, private road	32.5 feet	10 feet
Side (internal)	N/A	5 feet

(v) *Maximum Building Height:* YMC Table 5-1 in YMC Chapter 15.05 provides that the maximum building height in the R-1 zoning district is 35 feet.

(vi) *Access:* All lots would have 20 feet of frontage upon a public street in accordance with YMC §15.05.020(H) or would be accessed through a private street within the Planned Development.

(vii) *Sidewalk:* It is proposed that there will be a sidewalk along one side of the private access street for the duplexes in the Planned Development. Per YMC §15.05.020(J), there currently are sidewalks along the South 96th Avenue and Tieton Drive frontages of the proposed commercial lot.

(viii) *Density:* With an approximate density of 15.73 dwelling units per net residential acre, the proposed preliminary plat complies with YMC §15.05.030(B) and Table 4-1 of YMC Chapter 15.04 which allows duplexes in the R-1 zone as a generally-permitted Class (2) use, and does not limit the density of such a use. Net residential density excluding the commercial lot and the streets calculated per YMC §15.05.030: total lot area = 2.03 acres; area of the residential lots not including the commercial lot and the private street = 0.89 acres; 14 dwelling units ÷ 0.89 = 15.73 dwelling units per net residential acre. (The Notice of Application listed a lower density due to the inclusion of the commercial lot in the calculation).

(ix) *Streets/Dedication of Right-of-Way:* No additional right-of-way is required to be dedicated. Along the private street, curb and gutter shall be installed on both sides and a five-foot-wide sidewalk shall be installed on one side.

(x) *Frontage Improvements:* Per YMC §15.05.020(J), there currently are curbs, gutters and sidewalks along both the South 96th Avenue and the Tieton Drive frontages of the site. Per the Planned Development, the applicant is proposing slopes on the private street

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to exceed 10 percent if considered a reduction in standards in accordance with YMC §15.05.055. Pursuant to YMC Chapter 8.72, an excavation and street break permit shall be obtained for all work within the public right-of-way. Roads less than five years old can be cut, but the cost will be 150% of the restoration fee with no PCI discount.

(xi) *Wastewater:* Sewer shall be extended to the subject plat. There shall be 8-foot-wide easements along the front of the lots in accordance with YMC §12.02.010 and §12.02.020. All lots within the subject plat shall be served by a separate side sewer line from a public main in accordance with YMC §12.03.070. Sewer is to be installed per the Yakima Municipal Code.

(xii) *Water:* The applicant shall extend potable water to the subject plat in accordance with YMC §12.04.010. Water is served by Nob Hill Water Association.

(xiii) *Irrigation:* Parcel number 181319-33005 is within the Yakima-Tieton Irrigation District which has a permanent easement on the parcel.

(xiv) *Easements:* Easements are to be established in accordance with YMC §12.02.010 and §12.02.020.

(xv) *Public health, safety, welfare:* This proposal complements adjacent uses and will promote the public health, safety and general welfare insofar as there is a need in this community for additional housing.

(xvi) *Open spaces:* The proposed plat provides large enough duplex lots to provide open spaces of at least 40% of the area within each lot that would be free of impermeable surfaces.

(xvii) *Drainage systems:* Drainage system facilities will be provided in accordance with state and local regulations including the Eastern Washington Storm Water Manual and the City of Yakima Municipal Code.

(xviii) *Streets, alleys, and other public ways:* The subject property has frontage upon South 96th Avenue and Tieton Drive, and

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the duplex lots would have frontage on a private road with 40 feet of right-of-way width and 24 feet of pavement width to provide adequate access to the duplex lots.

(xix) *Water supplies:* Public water is required to be used for domestic and fire flow purposes, and water is available to the site from Nob Hill Water Association.

(xx) *Sanitary waste disposal:* A City of Yakima sewer main capable of serving the development shall be extended in order to serve all lots. The access to the lift station on the southwest corner of the lot shall be maintained.

(xxi) *Parks and playgrounds:* A park and playground is located approximately 1.7 miles from this subdivision at West Valley Park.

(xxii) *Sites for schools:* Cottonwood Elementary School is located approximately 0.5 miles from this subdivision, West Valley Junior High School is located approximately 2.6 miles away, and West Valley High School is located approximately 1.3 miles away. The School District did not submit any written comments.

(xxiii) *Sidewalks:* Per the provisions of the Development Agreement outline, a sidewalk will be provided along one side of the private street that will provide access to the duplex lots in the Planned Development. There are existing sidewalks along the South 96th Avenue and Tieton Drive frontages of the site that will provide access to the commercial lot in the Planned Development.

(xxiv) *Public Transit:* Yakima Transit Route 1 passes the intersection of South 96th Avenue and Tieton Drive where the proposed subdivision is located.

(xxv) *Serves the public use and interest:* This proposed eight-lot mixed-use Planned Development and Subdivision serves the public use and interest by providing lots for future residential and commercial development in the City.

(xxvi) *Time Limitation:* Upon preliminary plat approval, the applicant has five years from the date of preliminary approval to

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submit the final plat. Thereafter, 30 days prior to the expiration of preliminary approval the applicant must submit to the City Council a written request asking to extend the approval period for a maximum period of one year (YMC §14.20.160). Before the final plat can be recorded, all required infrastructure must be engineered, completed and inspected or engineered and financially secured and receive final plat approval from the Community Development Department.

XX. Consistency Analysis under Subsection 16.06.020(B) of the Yakima

Municipal Code. The following analysis involves the consistency of the Planned Development, Duplexes and 8-Lot Preliminary Short Plat with applicable development regulations, or in the absence of applicable regulations, the adopted Comprehensive Plan as mandated by the State Growth Management Act and the Yakima Municipal Code. During project review, neither the City nor any subsequent reviewing body may re-examine alternatives to, or hear appeals on, the following items identified in these conclusions except for issues of code interpretation:

(1) The type of land use contemplated by the proposal (a residential duplex development with one commercial lot) is permitted as a Planned Development and Subdivision with approval of Class (2) duplex uses on the site so long as it is approved by the Yakima City Council and complies with the conditions imposed by the City Council.

(2) The level of development with the proposed residential density of the development will not exceed the allowable level of development allowed for a Planned Development in the Single-Family Residential (R-1) zoning district.

(3) The availability and adequacy of infrastructure and public facilities is not an issue because the additional infrastructure that will be provided by the applicants will insure that adequate infrastructure and public facilities will be available for the proposed Planned Development and Preliminary Short Plat with seven Class (2) duplexes and a lot for one or more future commercial uses.

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(4) The character of the proposal, such as the proposal's consistency with applicable development standards of the City's Urban Area Zoning Ordinance, would be in compliance with the Planned Development Agreement and the conditions of the Preliminary Short Plat approval required by the City Council.

CONCLUSIONS

Based upon the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to recommend to the Yakima City Council the approval of a proposed Planned Development and Preliminary Short Plat with seven Class (2) duplexes and a lot for one or more future commercial uses that is set forth in YMC §14.3.080, YMC §15.28.040, YMC §15.14.040(G), YMC §15.15.040(I), YMC §14.15.020, YMC §14.15.050 and YMC §14.15.060.

(2) A SEPA Determination of Nonsignificance (DNS) was issued for this proposed Planned Development and Preliminary Short Plat on August 6, 2021, and became final without an appeal.

(3) The proposed modifications to development standards described in Subsection X(18) of these recommendations and to be described in a Development Agreement will allow for flexibility in the siting of new duplexes and commercial uses in the future.

(4) The proposed Planned Development as conditioned below satisfies all of the considerations and criteria for approval set forth in YMC §15.28.040(D).

(5) The proposed Class (2) duplex uses as conditioned below satisfy all of the considerations and criteria for approval set forth in YMC §15.14.040(G) and YMC §15.15.040(I).

(6) The proposed Preliminary Short Plat as conditioned below satisfies the criteria for approval set forth in YMC §14.15.050, YMC §14.15.060 and YMC §14.15.020(B) because it is in compliance with the City's Comprehensive Plan,

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zoning ordinance and subdivision ordinance; makes appropriate provisions for the public health, safety and general welfare and for open spaces, drainage ways, streets, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds and sidewalks; will serve the public use and interest; and, according to the weight of the evidence presented at the hearing, does not require that specific provisions be made for the other requisite plat considerations such as additional schools, additional schoolgrounds or additional planning features that assure safe walking conditions for students who walk to and from school.

(7) This proposed Planned Development and Preliminary Short Plat for seven Class (2) duplex uses and a lot for one or more future commercial uses are in compliance with all of the consistency requirements of Subsection 16.06.020(B) of the Yakima Municipal Code.

RECOMMENDATIONS

The Hearing Examiner recommends to the Yakima City Council that the proposed Planned Development and the proposed 8-lot Preliminary Short Plat for seven Class (2) duplexes with one lot for one or more future commercial uses at 9503, 9509 and 9515 Tieton Drive as described in the project narrative; as shown on the site plan dated April 21, 2020, which was received by the Planning Division on March 26, 2021; as described in these recommendations; and as described by related documents in the record of this matter which consists of the Planning Division file numbers PD#001-21, CL2#016-21, PSP#009-21 and SEPA#009-21 be **APPROVED**, subject to the following conditions:

(A) Prior to approval of the final plat, all required improvements shall be constructed or financially secured according to the standards and requirements of the City Engineer and also of YMC Title 12 except for modifications thereof allowed for the Planned Development;

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(B) All lots shall be served with public water. No individual domestic or irrigation wells shall be permitted for any of the lots. Prior to final plat approval, written verification must be submitted to the Planning Division indicating that each lot within the plat has been served with domestic water and applicable fees have been paid;

(C) All lots shall be provided with public sewer service according to YMC Title 12 standards. Prior to final plat approval written verification from the City of Yakima Engineering Department must be provided to the Planning Division indicating that all sewer extensions have been completed and inspected or financially secured;

(D) Public utility easements shall be established along the front of each lot which are a minimum of eight feet in width, or twice the buried depth of the utility, whichever is greater, in accordance with YMC §12.02.010 and §12.02.020;

(E) All public and private utilities shall be located underground, with the exception of telephone boxes and such similar structures;

(F) All public and private utilities to be located within public road rights-of-way must be constructed prior to the start of road construction;

(G) An excavation and street break permit shall be obtained for all work within the public right-of-way. Roads less than five years old can be cut, but the cost will be 150 percent of the restoration fee with no PCI discount;

(H) All frontage improvements shall be completed or bonded for prior to short plat approval. Civil engineering plans for public improvements shall be approved prior to bonding for public improvements;

(I) At the discretion of the City Engineer, the owner may bond for required frontage improvements or enter into a deferral agreement for future participation in the cost of any frontage and/or roadway improvement of a Local Improvement District (LID) which is constructed abutting the owner's property. The bond or deferral agreement shall be executed and recorded prior to or as part of approval of the plat;

(J) This plat shall be subject to the following notes, which must be placed on the face of the plat:

1. The addresses shown on this plat are accurate as of the date of recording, but may be subject to change. The City of Yakima

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Building Codes Division is responsible for the confirmation or reassignment of addresses at the time of building permit issuance;

2. The owners shown hereon, their grantees and assignees in interest hereby covenant and agree to retain all surface water generated within the plat on-site;
3. The City of Yakima has no responsibility to build, improve, maintain or otherwise service any private road for this plat/short plat. Any right-of-way dedicated to the public by this plat/short plat shall not be opened as a City (or County) street until such time as it is improved to city street standards and accepted as part of the City transportation system; and
4. This subdivision is subject to the specific Master Planned Development Overlay of PD#001-21, as approved by the Yakima City Council on ____, under Resolution No. ____, and recorded under Auditor's File Number ____, which controls the development and usage of the property within this recorded plat.

(K) Irrigation approval by the Yakima-Tieton Irrigation District is required, and shall be shown on the face of the final plat;

(L) A current title report covering the subject property must accompany the final short plat;

(M) The applicant and City of Yakima shall enter into a Development Agreement specifying all development standards, modifications thereto and conditions of approval prior to final plat approval which shall be finalized and recorded in accordance with RCW 36.70B and all other laws applicable to Development Agreements;

(N) Standard setbacks for the R-1 zoning district shall apply except for any setback modifications included in the Development Agreement;

(O) Upon preliminary plat approval, the applicant has five years to submit the final plat. Thereafter, 30 days prior to the expiration of said approval the applicant must submit to the City Council a written request asking to extend the approval period for a maximum period of one year;

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(P) Because the Type (2) Review request is part of the overall preliminary long plat, that approval shall be applicable so long as the plat remains otherwise conforming;

(Q) Prior to the issuance of any permits, the applicant is encouraged to conduct a professional archaeological survey of the project area, with copies of the survey being provided to DAHP and the Planning Division. If the applicant does not wish to have a cultural resources survey conducted on the site, an Inadvertent Discovery Plan (IDP) shall be prepared by the applicant, and a copy of the IDP shall be submitted to the City;

(R) In accordance with YMC §14.20.230, the City shall not issue any building permits until a copy of the final recorded short plat is submitted; and

(S) All other requirements of the zoning and subdivision ordinance, although not specifically set forth herein, shall be complied with in their entirety except for the modifications to standards that are specified in the Development Agreement for the Planned Development.

DATED this 23rd day of September, 2021.


Gary M. Cuillier, Hearing Examiner