

7. Make amendments to definitions in Renton Municipal Code Title IV.
8. Amend existing urban center design overlay standards and guidelines to establish a new District C, encompassing the Urban Center-North. Provide guidance to accomplish quality urban scale development, define pedestrian streets, and achieve gateway entry features into the redevelopment area.*

Responding to Council President Keolker-Wheeler's inquiry, City Attorney Larry Warren confirmed that the recent Planning Commission recommendations were included in the related ordinances.

*MOVED BY KEOLKER-WHEELER, SECONDED BY PARKER, COUNCIL CONCUR IN THE COMMITTEE REPORT. CARRIED. (See pages 432 to 435 for ordinances.)

Planning & Development
Committee
Comprehensive Plan: 2003
Amendments

Planning and Development Committee Chair Briere presented a report regarding the 2003 Comprehensive Plan amendments and rezones. The Committee met on October 30, November 6, and November 13, 2003, to consider the recommendation of the Planning Commission for the 2003 Comprehensive Plan amendments and rezones. The Committee recommended approval of the Planning Commission's recommendations with modifications, as appropriate, as shown on the matrix entitled "Attachment A - 2003 Comprehensive Plan Amendments" dated November 24, 2003, listed as follows:

- 2003-M-1 - City of Renton applicant; S. Talbot Rd. and S. 43rd St. (WSDOT)
- 2003-M-2 - City of Renton applicant; King County Public Health Department; NE 4th St. (on hold until 2004 amendment cycle)
- 2003-M-3 - City of Renton applicant; I-405/Cedar River Trail (WSDOT); on hold until 2004 amendment cycle
- 2003-M-4 - City of Renton applicant; East Renton Plateau
- 2003-M-5 - City of Renton applicant; Fry's Electronics
- 2003-M-6 - City of Renton applicant (withdrawn)
- 2003-M-7 - City of Renton applicant (holdover - 2004 update)
- 2003-M-8 - City of Renton applicant; SR 900 LLC (Merlino)
- 2003-M-9 - JDA Group LLC applicant; Rainier Ave. N.
- 2003-M-10 - JDA Group LLC applicant; NW 5th St.
- 2003-M-11 - JDA Group LLC applicant (on hold until 2004 amendment cycle)
- 2003-M-12 - James Dalpay applicant; NE 12th St
- 2003-M-14 - Liberty Ridge LLC (Tydico)
- 2003-T-3 - The Boeing Company applicant (on hold until 2004 amendment cycle)

MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL CONCUR IN THE COMMITTEE REPORT. CARRIED. (See pages 432, 435 & 436 for

general fund cannot be put into the utility fund to pay for capital improvement projects.

Council President Keolker-Wheeler acknowledged the importance of fully funding the utilities, and expressed her support to raise the rates in a nominal amount this year.

Mayor Tanner confirmed that the City will not have to defer a single project if the rate increase is not approved; however, a larger rate increase will be necessary next year. He stated that although he is not proposing a rate increase, he is not opposed to one.

In response to Councilwoman Nelson's inquiry regarding the dollar amount of the increase, Mr. Zimmerman stated that the average residential customer would see an increase of approximately one dollar per month.

***ROLL CALL: FOUR AYES: KEOLKER-WHEELER, BRIERE, NELSON, CLAWSON; THREE NAYS: PARKER, PERSSON, CORMAN. MOTION CARRIED. (See page 435 for ordinance.)**

ORDINANCES AND RESOLUTIONS

Comprehensive Plan 2003 Amendments

The following ordinances were presented for first reading and advanced for second and final reading:

An ordinance was read adopting the 2003 amendments to the City's 1995 Comprehensive Plan, maps, and data in conjunction therewith, and declaring an emergency. **MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.**

Ordinance #5026 Comprehensive Plan: 2003 Amendments

Following second and final reading of the above ordinance, it was **MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.**

Planning: Urban Center-North Zoning Designations

An ordinance was read amending Chapter 2, Zoning Districts - Uses and Standards, of Title IV (Development Regulations) of City Code to add the Urban Center-North zoning designations, and declaring an emergency. **MOVED BY BRIERE, SECONDED BY NELSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.**

Ordinance #5027 Planning: Urban Center-North Zoning Designations

Following second and final reading of the above ordinance, it was **MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.**

Planning: Urban Center-North Zoning, Addition to Processes & Procedures

An ordinance was read amending Chapter 1, Administration and Enforcement, Chapter 2, Zoning Districts - Uses and Standards; Chapter 3, Environmental Regulations and Overlay Districts; Chapter 8, Permits and Decisions; Chapter 9, Procedures and Review Criteria; and Chapter 11, Definitions; of Title IV (Development Regulations) of City Code by adding regulations implementing the Urban Center-North zoning to Citywide processes and procedures, and updating names of City site plan processes, and declaring an emergency. **MOVED BY CORMAN, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.**

Ordinance #5028 Planning: Urban Center-North Zoning, Addition to Processes

Following second and final reading of the above ordinance, it was **MOVED BY CORMAN, SECONDED BY NELSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.**

& Procedures

Planning: Urban Center-North, Airport & Design Overlay

An ordinance was read amending Chapter 3, Environmental Regulations and Overlay Districts, of Title IV (Development Regulations) of City Code revising Airport related height and use regulations and urban center design overlay regulations for development in the Urban Center-North, and declaring an emergency. MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED

Ordinance #5029

Planning: Urban Center-North, Airport & Design Overlay

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Planning: Urban Center-North, Parking Standards

An ordinance was read amending Section 3-1080, Parking, Loading, and Driveway Regulations, of Chapter 4, Citywide Property Development Standards, of Title IV (Development Regulations) of City Code by creating parking standards for development in Urban Center-North, and declaring an emergency. MOVED BY BRIERE, SECONDED BY CORMAN, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5030

Planning: Urban Center-North, Parking Standards

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: BNSF Railroad Property, Logan Ave N, IL to UC-N 1 (R-02-141)

An ordinance was read changing the zoning classification of property consisting of 2.78 acres located at Logan Ave. N. and N. 6th St. from Light Industrial (IL) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency, R-02-141 (Burlington Northern Santa Fe Railroad). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5031

Rezone: BNSF Railroad Property, Logan Ave N, IL to UC-N 1 (R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Boeing Property, Park Ave N, CO to UC-N 1 (R-02-141)

An ordinance was read changing the zoning classification of property consisting of 13.77 acres located on Park Ave. N., between N. 5th St. and N. 8th St. from Commercial Office (CO) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency, R-02-141 (Boeing). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5032

Rezone: Boeing Property, Park Ave N, CO to UC-N 1 (R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Boeing Property, N 6th St, IH to UC-N 1 (R-02-141)

An ordinance was read changing the zoning classification of property consisting of 89.85 acres located north of N. 6th St., between Logan Ave. N. and Garden Ave. N. from Heavy Industrial (IH) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency, R-02-141 (Boeing). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5033

Rezone: Boeing Property, N
6th St, IH to UC-N 1 (R-02-
141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Boeing Property,
Logan Ave N, IH to UC-N 2
(R-02-141)

An ordinance was read changing the zoning classification of property consisting of 154.47 acres located between Lake Washington on the north, Nishiwaki Lane on the west, and Logan Ave. N. on the east from Heavy Industrial (IH) to Urban Center-North 2 (UC-N 2) zoning, and declaring an emergency; R-02-141 (Boeing). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5034

Rezone: Boeing Property,
Logan Ave N, IH to UC-N 2
(R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Wendell Property,
Park Ave N, CO to UC-N 1
(R-02-141)

An ordinance was read changing the zoning classification of property consisting of 0.57 acres located at Park Ave. N. and N. 6th St. from Commercial Office (CO) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency; P-02-141 (Wendell). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5035

Rezone: Wendell Property,
Park Ave N, CO to UC-N 1
(R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Wiemeyer Property, N
5th St, CO to UC-N 1 (R-02-
141)

An ordinance was read changing the zoning classification of property consisting of 0.40 acres located at N. 5th St. and Garden Ave. N. from Commercial Office (CO) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency; R-02-141 (Wiemeyer). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5036

Rezone: Wiemeyer Property, N
5th St, CO to UC-N 1 (R-02-
141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Fry's Property, Garden
Ave N, COR 3 to UC-N 1 (R-
03-100)

An ordinance was read changing the zoning classification of property consisting of 21.3 acres located at Garden Ave. N. and N. 8th St. from Center Office Residential 3 (COR 3) to Urban Center-North 1 (UC-N 1) zoning, and declaring an emergency; R-03-100 (Fry's). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5037

Rezone: Fry's Property, Garden
Ave N, COR 3 to UC-N 1 (R-
03-100)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: BNSF Railroad
Property, Lake WA Blvd N, IH
to UC-N 2 (R-02-141)

An ordinance was read changing the zoning classification of property consisting of 5.91 acres located at Lake Washington Blvd. N. from Heavy Industrial (IH) to Urban Center-North 2 (UC-N 2) zoning, and declaring an emergency; R-02-141 (Burlington Northern Santa Fe Railroad). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5038
Rezone: BNSF Railroad
Property, Lake WA Blvd N, IH
to UC-N 2 (R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

Rezone: Puget Sound Energy
Property, Lake WA Blvd N, IH
to UC-N 2 (R-02-141)

An ordinance was read changing the zoning classification of property consisting of 10.09 acres, which abut Lake Washington Blvd. N., from Heavy Industrial (IH) to Urban Center-North 2 (UC-N 2) zoning, and declaring an emergency; R-02-141 (Puget Sound Energy). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADVANCE THE ORDINANCE FOR SECOND AND FINAL READING. CARRIED.

Ordinance #5039
Rezone: Puget Sound Energy
Property, Lake WA Blvd N, IH
to UC-N 2 (R-02-141)

Following second and final reading of the above ordinance, it was MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE ORDINANCE AS READ. ROLL CALL: ALL AYES. CARRIED.

The following ordinances were presented for first reading and referred to the Council meeting of 12/01/2003 for second and final reading:

Annexation: Falk, S 47th St &
102nd Ave SE

An ordinance was read annexing contiguous unincorporated territory known as the Falk Annexation consisting of 6.43 acres bounded by S. 47th St. to the north, SE 185th Pl. to the south, and 102nd Ave. SE to the east, by the election method; and setting the taxation rate, establishing a zoning classification of R-8, and fixing the effective date of the annexation. MOVED BY CORMAN, SECONDED BY PERSSON, COUNCIL REFER THE ORDINANCE FOR SECOND AND FINAL READING ON 12/01/2003. CARRIED.

Budget: 2004 Property Tax
Levy

An ordinance was read establishing the property tax levy for the year 2004 for both general purposes and for voter approved bond issues. MOVED BY PARKER, SECONDED BY PERSSON, COUNCIL REFER THE ORDINANCE FOR SECOND AND FINAL READING ON 12/01/2003. CARRIED.

Utility: Rates

An ordinance was read amending Sections 8-4-31 of Chapter 4, Water, and 8-5-15 of Chapter 5, Sewers, of Title VIII (Health and Sanitation) of City Code by increasing utility fees. MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL REFER THE ORDINANCE FOR SECOND AND FINAL READING ON 12/01/2003. CARRIED.

Rezone: JDA Group Property,
Rainier Ave N, R-8 to CA (R-
02-140)

An ordinance was read changing the zoning classification of property consisting of 0.52 acres located on the 600 block of Rainier Ave. N. from Residential - eight dwelling units per acre (R-8) to Commercial Arterial (CA) zoning; R-02-140 (JDA Group LLC). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL REFER THE ORDINANCE FOR SECOND AND FINAL READING ON 12/01/2003. CARRIED.

Resolution #3667
Comprehensive Plan: Tydico
Development Agreement

A resolution was read authorizing the Mayor and City Clerk to execute a development agreement with Liberty Ridge LLC (Tydico). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE RESOLUTION AS READ. CARRIED.

Resolution #3668
Comprehensive Plan: Merlino
Development Agreement

A resolution was read authorizing the Mayor and City Clerk to execute a development agreement with SR 900 LLC (Merlino). MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE RESOLUTION AS READ. CARRIED.

Resolution #3669
Comprehensive Plan: Boeing
Development Agreement

A resolution was read authorizing the Mayor and City Clerk to enter into a development agreement with The Boeing Company, establishing certain roles and responsibilities for the potential phased redevelopment of all or a portion of the Boeing Renton plant site. MOVED BY BRIERE, SECONDED BY CLAWSON, COUNCIL ADOPT THE RESOLUTION AS READ. CARRIED.

Added
Resolution #3670
Planning: Heavy Industrial
Zone Development Moratorium

A resolution was read terminating a moratorium on development in portions of the Heavy Industrial (IH) Zone, effective December 1, 2003. MOVED BY CORMAN, SECONDED BY NELSON, COUNCIL ADOPT THE RESOLUTION AS READ. CARRIED.

NEW BUSINESS
Police: Animals at Large

Councilman Corman reported receipt of complaints from some Highlands area residents regarding menacing pit bull dogs, and he advised residents to call the Police Department if they are intimidated by any animals on the loose.

ADJOURNMENT

MOVED BY NELSON, SECONDED BY CORMAN, COUNCIL ADJOURN. CARRIED. Time: 9:03 p.m.

Bonnie I. Walton, City Clerk

Recorder: Michele Neumann
November 24, 2003

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IN PROCEEDINGS BEFORE THE CITY OF RENTON
HEARING EXAMINER

IN RE THE BOEING COMPREHENSIVE
PLAN AMENDMENTS 2003 - NICHOLSON
APPEAL

) NO. LUA 02-141, ECF, CPA, R. EIS
)
) ORDER
)
)

ORDER

The Hearing Examiner, as a result of the Pre-Hearing Conference in the matter, makes the following determinations and hereby:

ORDERS that if the parties do not settle this matter beforehand, the appeal hearing will be held on February 24, 2004 at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall.

At the pre-hearing conference the appellant indicated that he would be the sole witness and would call no additional witnesses. If the appellant decides to change his mind and call witnesses he shall be required to inform the office and the other parties no later than February 2, 2004 who those witnesses will be and the nature of their testimony.

The issues which may be raised at the hearing shall be confined to the following areas although those may be interpreted broadly to assure that the appellant has the latitude necessary to pursue his appeal:

a. Transportation issues, which may include traffic analysis, pedestrian safety and concurrency models.

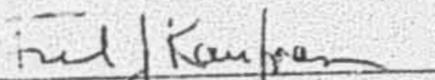
b. Storm water retention, detention, outfall and potential impacts on Lake Washington or the Cedar River if the appellant can show those water features might be affected by storm water handling. There may also be questions raised as to the appropriate King County manual for dealing with storm water.

c. The appellant cannot raise so-called socio-economic issues, political issues or his proposed salutary changes to regulations. All evidence shall pertain to existing codes and regulations of the City.

d. This office can only explore the validity or sufficiency of the City's Environmental Impact Statement. It has no jurisdiction to explore questions of "spot zoning" nor does it have GMA review authority.

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2 Finally, this office would appreciate it if each party provides the other parties of record
3 with copies of correspondence when it writes this office regarding any matters pertaining to this
4 issue.

5 ENTERED at Renton, Washington, on this 19th day of January, 2004
6
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8 
9 Fred J. Kaufman, Hearing Examiner
10

11
12 Parties of Record:

13 Mr. Larry Warren
14 City Attorney
15 P.O. Box 626
16 Renton, WA 98057

17 Mr. Galen G. Shuler
18 Perkins Coie
19 1201 Third Avenue, Ste. 4800
20 Seattle, WA 98101

21 Brad Nicholson
22 2300 NE 28th St.
23 Renton, WA 98056

24 Fred J. Kaufman
25 Hearing Examiner
26 1055 South Grady Way
27 Renton, WA 98055
28



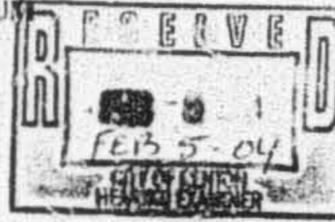
Kathy Kusler-Wheeler, Mayor

CITY OF RENTON

Office of the City Attorney
Lawrence J. Warren

Assistant City Attorneys
Mark Barber
Zanetta L. Fontes
Russell S. Wilson
Ann S. Nielsen
Sasha P. Alessi

MEMORANDUM



To: Fred Kaufman, Hearing Examiner
From: Lawrence J. Warren, City Attorney
Date: January 30, 2004
Subject: Appeal of Examiner's Decision on Adequacy of EIS by Brad Nicholson

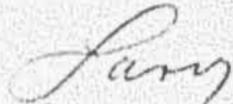
Sometime during the pre-trial hearing on the Nicholson appeal, you mentioned something about a further appeal of your decision on Mr. Nicholson's appeal of the adequacy of the EIS. Normally, the Code would seem to call for an appeal to the City Council and then on to court. However, in this instance, the Council has already taken legislative action based upon the EIS and it would appear that you would be asking them to second guess their own decisions if the appeal went to the City Council.

My reading of SEPA, GMA, and City Code, would seem to indicate that the appeal of your decision, as to the adequacy of the EIS, would be to the Growth Management Hearings Board. My reading of the law would also indicate that the appeal time to the Board would be the same as the normal appeal time provided by City Code.

Since Mr. Nicholson already has an appeal pending before the Growth Management Hearings Board, this course of action would seem to be efficient for him, as well as the parties.

So that this is not an ex-parte communication, I am providing copies of the letter to Galen Schuler, attorney for the Boeing Company, and Mr. Nicholson. I don't believe that any of the parties would be surprised or aggrieved by the requirement that any such appeal be to the Growth Management Hearings Board. I have spoken about the possibility with Mr. Schuler and he agrees with me. Mr. Nicholson's initial petition to the Growth Management Hearings Board mentions the possibility of amending his petition to raise the adequacy issue before the Growth Board.

If I can answer any questions, please feel free to contact me.


Lawrence J. Warren

LJW:inj
T10:39:52
cc: Jay Covington

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IN PROCEEDINGS BEFORE THE CITY OF RENTON
HEARING EXAMINER

IN RE THE BOEING COMPREHENSIVE) NO. LUA 02-141, FCF, CPA, R, EIS
PLAN AMENDMENTS 2003 - NICHOLSON)
APPEAL) ORDER
)

ORDER

The Hearing Examiner, as a result of the Pre-Hearing Conference in this matter, makes the following determinations and hereby,

ORDERS that if the parties do not settle this matter beforehand, the appeal hearing will be held on February 24, 2004 at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall.

At the pre-hearing conference the appellant indicated that he would be the sole witness and would call no additional witnesses. If the appellant decides to change his mind and call witnesses he shall be required to inform the office and the other parties no later than February 2, 2004 who those witnesses will be and the nature of their testimony.

The issues which may be raised at the hearing shall be confined to the following areas although those may be interpreted broadly to assure that the appellant has the latitude necessary to pursue his appeal:

- a. Transportation issues, which may include traffic analysis, pedestrian safety and concurrency models.
- b. Storm water retention, detention, outfall and potential impacts on Lake Washington or the Cedar River if the appellant can show those water features might be affected by storm water handling. There may also be questions raised as to the appropriate King County manual for dealing with storm water.
- c. The appellant cannot raise so-called socio-economic issues, political issues or his proposed salutary changes to regulations. All evidence shall pertain to existing codes and regulations of the City.
- d. This office can only explore the validity or sufficiency of the City's Environmental Impact Statement. It has no jurisdiction to explore questions of "spot zoning" nor does it have GMA review authority.

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2 Finally, this office would appreciate it if each party provides the other parties of record
3 with copies of correspondence when it writes this office regarding any matters pertaining to this
4 issue.

5 ENTERED at Renton, Washington, on this 19th day of January, 2004
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9 
10 Fred J. Kaufman, Hearing Examiner

11
12 Parties of Record:

13 Mr. Larry Werren
14 City Attorney
15 P.O. Box 626
16 Renton, WA 98057

17 Mr. Galen G. Shuler
18 Perkins Coie
19 1201 Third Avenue, Ste. 4300
20 Seattle, WA 98101

21 Brad Nicholson
22 2300 NE 28th St.
23 Renton, WA 98056

24 Fred J. Kaufman
25 Hearing Examiner
26 1055 South Grady Way
27 Renton, WA 98055
28

CITY OF RENTON

JAN 08 2004
1:18 p.m.
RECEIVED
CITY CLERK'S OFFICE

BEFORE THE CITY OF RENTON
OFFICE OF THE HEARING EXAMINER
IN AND FOR THE STATE OF WASHINGTON

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p>	<p>In a matter concerning the purported) adequacy of a statement pertaining to) comprehensive planning, development) regulations, and zoning enactments) and amendments of the City of Renton:) Brad Nicholson, a citizen of the City) of Renton:) Appellant,) v.) City of Renton, a State of Washington) Municipal Corporation:) Respondent,) The Boeing Company, owning and) operating a commercial aircraft) manufacturing plant on land zoned) Industrial Heavy in the City of) Renton:) Proponent.)</p>	<p>Case No. LUA-02-141, CPA, R, EIS</p> <p>MOTION AND BRIEF IN SUPPORT OF GROUNDS TO DENY LIMITING MOTION MADE BY CITY ATTORNEY, AFFIRMATIVE DETERMINATION OF INADEQUACY, AND LEGAL GROUNDS FOR REMAND, OR REQUESTED PRELIMINARY CLARIFICATION OF ISSUES.</p>
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19 TO: Mr. Fred Kaufman
Hearing Examiner City of Renton
20 1055 South Grady Way
Renton, WA 98055

21 AND TO: Mr. Larry Warren
City Attorney
22 P.O. Box 626
Renton, Washington 98057

23 AND TO: Mr. Galen G. Shuler
24 Counsel for Proponent
Perkins Coie,
25 1201 Third Avenue, Suite 4800
Seattle, Washington 98101

Response and Argument to City
Attorney's motion to limit

Brad Nicholson
2300 N.F. 28th St.
Renton, Wa. 98056

1 COMBS NW, a citizen, Brad Nicholson by and through his own motion; for want
2 of community and consistency, health, safety, general welfare, morality,
3 economic and social environmental quality, and for want of fulfillment of the
4 purposes and objectives, common goals, and specific directives of the Laws of
5 the State of Washington and its Environmental Policy Act (CMA) (SEPA) (the
6 act);

7 Does hereby petition, and requests review and affirmation and relief in favor
8 of this motion and against the respondents each of them, pursuant to and
9 under the authority of the Growth Management Act and the State Environmental
10 Policy Act, and according to Laws of the State of Washington and according to
11 its Constitution, aggrieved by the respondents and the threat they pose to
12 the public interest and its environment, through their acts each of them, and
13 alleges the following:

14 I agree with Mr. Warren that the inadequacy of the environmental impact
15 statement and its contents are now a legal issue. "The adequacy of an
16 environmental impact statement is a question of law that is subject to
17 de novo review both on the administrative level and by the courts" KIEWIT
18 CONSTR. GROUP v. CLARK COUNTY 83 Wn. App. 133. All that counsel wants is to
19 try to silence the true issues of this case, so they can unlawfully proceed
20 without required reasonable disclosure. I would assert there must be a
21 reasonably thorough discussion and disclosure of the significant aspects of
22 the proposal that would result in probable environmental consequences which
23 are neither remote nor speculative, and that includes a discussion of, like I
24 have asked for within the statement itself, reasonable thorough disclosure
25 and discussion of the economic, social, and unlawful and unconstitutional

1 natures of this action and at now at issue before this office. Like I have
2 stated, I composed a nine-page comment letter, a two-page comment letter, and
3 a seven-page appeal letter outlining and describing need for discussions
4 within the process along with identification of the subject matter that
5 should be discussed within that context. It has all been ignored. We gave
6 proponent a three point two billion dollar tax break. To sell their property
7 for a "hybrid big box shopping center"?
8 It would appear from the contents of Counsel's motion, that he has failed to
9 read or construe the contents of my comment letters or the impact statement
10 and failed to recognize that the appeal that I have filed to this office
11 reiterate the pages and paragraphs of those correspondences as well as the
12 issues that have arisen after that correspondence, all of which are part of
13 the public record leading up to this appeal. It would appear that is why he
14 believes that the appeal should be limited only to storm-water pollution and
15 transportation issues. However, that is not the case, and I would again
16 request review of my letters and the appeal that I have written.

17
18 I. ISSUES

19 THIS APPEAL CONCERNS ISSUES OF ADEQUACY AS DEFINED BY LEGAL REQUIREMENTS AND
20 CONTAINED IN THE APPEAL LETTER AND THE ENVIRONMENTAL IMPACT STATEMENT AND
21 COMMENTS PREVIOUSLY RAISED WITHIN THIS ACTION. THE IMPACT STATEMENT IS
22 LEGALLY INADEQUATE. THEY DID NOT RESPOND IN A REASONABLE MANNER. THERE IS NO
23 REASON TO LIMIT THE ADMISSIBILITY OF FACTS ALREADY CONTAINED IN THE
24 ADMINISTRATIVE RECORD AND WITHIN THE IMPACT STATEMENT ITSELF. SHOULD BE
25 DISCLOSED PRIOR TO A DECISION THAT THE PROPOSED REZONE IS UNLAWFUL, ITS

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1 IMPACTS HAVE BEEN INADEQUATELY DISCUSSED, AND THAT CITY CODE IS NON-COMPLIANT
2 WITH THE DIRECTIVES AND POLICIES OF ENVIRONMENTAL POLICY ACT AND OF THE
3 GROWTH MANAGEMENT ACT AND NEEDS REVISION. A SUPPLEMENTAL AND REASONABLE AND
4 THOROUGH ANALYSIS OF THE SOCIAL AND ECONOMIC CONSEQUENCES MUST FOLLOW. THE
5 CONCLUSIONS OF THE CITY COUNCIL DETERMINATION ARE UNSUBSTANTIATED, BECAUSE
6 THERE HAVE BEEN NO ADMINISTRATIVE FACTS OR CONCLUSIONS PERTAINING TO DISPUTED
7 SUBJECTS WITHIN THE STATEMENT, AND THEREFORE THE FINDINGS ARE INADEQUATE.
8 PROVISIONS OF STATUTORY, JUDICIAL, ADMINISTRATIVE, AND CONSTITUTIONAL LAWS
9 HAVE BEEN OR WILL BE UNLAWFULLY VIOLATED. THEREFORE THE AGREEMENT FOR PURPOSE
10 OF AVOIDING THE SUBDIVISION REGULATIONS IS UNLAWFUL.

11

12

II. AUTHORITY AND ARGUMENT

13 This motion is written with regard to other correspondence and motion,
14 previously acknowledged, requesting my issues be limited and clarified, and I
15 hereby respond by asking the following preliminary questions and addressing
16 these issues in this manner and in accordance with their request.

17 The main issue is whether there is the observance and effectuation of the
18 articulated responsibilities of Washington laws and SEPA so inherently
19 necessary to our moral values that we all believed that our City government
20 and company management should perform and disclose to all. I start here with
21 a reminder of these purposes and responsibilities as defined by SEPA.

22 RCW 43.21C.010 Purposes.

23 The purposes of this chapter are: (1) To declare a state policy which will
24 encourage productive and enjoyable harmony between man and his environment;
25 (2) to promote efforts which will prevent or eliminate damage to the

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1 environment and biosphere; (3) and stimulate the health and welfare of man;
2 [1971 ex.s. c 109 § 1.]
3 RCW 43.21C.020 Legislative recognitions--Declaration--Responsibility,
4 (1) The legislature, recognizing that man depends on his biological and
5 physical surroundings for food, shelter, and other needs, and for cultural
6 enrichment as well; and recognizing further the profound impact of man's
7 activity on the interrelations of all components of the natural environment,
8 particularly the profound influences of population growth, high-density
9 urbanization, industrial expansion, resource utilization and exploitation,
10 and new and expanding technological advances and recognizing further the
11 critical importance of restoring and maintaining environmental quality to the
12 overall welfare and development of man, declares that it is the continuing
13 policy of the state of Washington, in cooperation with federal and local
14 governments, and other concerned public and private organizations, to use all
15 practicable means and measures, including financial and technical assistance,
16 in a manner calculated to: (a) Foster and promote the general welfare; (b)
17 to create and maintain conditions under which man and nature can exist in
18 productive harmony; and
19 (c) fulfill the social, economic, and other requirements of present and
20 future generations of Washington citizens.
21 (2) In order to carry out the policy set forth in this chapter, it is the
22 continuing responsibility of the state of Washington and all agencies of the
23 state to use all practicable means, consistent with other essential
24 considerations of state policy, to improve and coordinate plans, functions,
25 programs, and resources to the end that the state and its citizens may:

1 (a) Fulfill the responsibilities of each generation as trustee of the
2 environment for succeeding generations;
3 (b) Assure for all people of Washington safe, healthful, productive, and
4 aesthetically and culturally pleasing surroundings;
5 This being first said, the first and paramount consideration and question
6 that arises from the text that relates our responsibilities by stating,
7 "fulfill the social, economic, and other requirements of present and future
8 generations of Washington citizens". (emphasis supplied) and,
9 "consistent with other essential considerations of state policy"; must be
10 inherently speaking of, among other things, the Constitution of the State of
11 Washington and its constructions, and giving rise to my first question.
12
13 Under Washington case law, what legal tests and criteria apply in determining
14 whether a rezone from a zoning of Industrial Heavy manufacturing desirable
15 enough to extend a three point two billion dollar tax incentive, to
16 alternatively justify a big box shopping center, condominiums and the like,
17 under an urban center designation, constitutes arbitrary and capricious spot
18 zone in unlawful violation of that legislation and Constitution?
19
20 Combined, does the hybrid shopping center fulfill the social, economic, and
21 other requirement while proceeding without a reasonably thorough discussion
22 and knowledge of, implementation of those legal and just and Constitutional
23 principles, and with what appears to be an unlimited and arbitrary exercise
24 of police power?
25

1 CAN THESE PROCESSES CONTINUE TO PROCEED AND WHEN THEY ARE ARBITRARY AND
2 CAPRICIOUS UNDER RELEVANT SECTIONS OF LAW AND WITHOUT DISCLOSURE AND
3 DISCUSSION OF THEIR WILLFUL UNREASONABLENESS?
4

5 As outlined herein, it is tremendous and spells a probable economic and
6 social chaos. Although it is also true that social and economic competition
7 between two urban shopping districts has an adverse impact primarily because
8 one may fail or cause degradation to the other and that is all we would have,
9 it is not the essence of what I was referring to in the statement. I am
10 referring to the fact that we are an industrial and productive team of
11 citizens, and to begin with, and excuse me for a moment, but I have searched
12 and scoured the record and the council minutes and questioned planners
13 involved in this action, and I could not obtain any administrative findings
14 and conclusions as to the issues that I identified and were disputed within
15 the statement. I would also like to be able to have a complete record for
16 review, and that includes a record of proceedings that have been conducted
17 outside of this public process and the findings of fact and conclusions of
18 law. The main issue here should be whether the Environmental review committee
19 decision is "clearly erroneous", and I do not have any findings and
20 conclusions from which I may begin to proceed. See, ASARCO INC. v. AIR
21 QUALITY COALITION, 92 Wn.2d 685, 700, 601 P.2d 501 (1979); NORWAY HILL
22 PRESERV. & PROTEC. ASS'N v. KING COUNTY COUNCIL, 87 Wn.2d 267, 275, 552 P.2d
23 674 (1976). Under these standards, agency action may be reversed when the
24 reviewing official is firmly convinced in light of the record and the public
25 policies contained in RCW 43.21C that a mistake has been committed. "When a

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1 governmental agency makes a threshold determination, it must show it
2 considered environmental factors "in a manner sufficient to amount to prima
3 facie compliance with the procedural requirements of SEPA". Citing, SISLEY v.
4 SAN JUAN COUNTY, 89 Wn.2d 78, 84, 569 P.2d 712 (1977) (quoting JUANITA BAY
5 VALLEY. COMM'Y ASS'N v. KIRKLAND, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973))

6
7 NONE OF THAT HAS BEEN PERFORMED AND IT MUST BE, IN ORDER TO FACILITATE THE
8 OPPOSING ARGUMENT. CITIZENRY IS UNLAWFULLY DEPRIVED OF THAT DISLCOSURE AND
9 OPPORTUNITY BECAUSE THERE IS NO FINDINGS OF FACT UPON WHICH TO BEGIN THAT
10 ARGUMENT. THE STAFF, OR COUNCIL (IF IT HAS REVERTED TO SITTING IN AN
11 ADMINISTRATIVE CAPACITY) DID NOT MAKE THE REQUIRED FINDINGS.

12
13 An opposing view will be discussed further in the following pages for their
14 convenience:

15 I will respond to these questions in the manner set forth in this analysis
16 and state that reasonable and thorough disclosure and discussion of the
17 contested elements contained within the record and within the impact
18 statement are my primary issues. Staff evidently proceeded without knowing
19 these facts to be true. That is what I am appealing.

20 Preliminarily, I construe that I have been informed by Hearing Examiner that
21 the request for my response on the above-stated question is generally related
22 to a pending proposal by the Boeing Company; a motion by the City and its
23 Attorneys to limit; and to rezone its property into a broad range of use
24 under the purported urban center designation in the City of Renton; to amend
25 the code, comprehensive plan, and development standards therewith; and

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1 because of my readily understandable interest and my response I subsequently
2 accepted and composed this legal brief containing a discussion of what legal
3 counsel for the City and company should believe are the pertinent court
4 decisions and other authorities to be examined in answering these questions.
5 I note that you also are provided and favored with a copy of this brief,
6 which I will refer to hereafter, and have heretofore provided us with a short
7 description of the actions and their contents.

8
9 In accordance with that subsequent correspondence, however, we will not here
10 attempt to deal with any of the specific facts which may be involved with
11 respect to those proposed projects if and when an application for a project
12 is formally recommended for approval by the office or the City of Renton in
13 connection therewith. These facts discussed will be contained in the record
14 that has been created in these proceedings created before this in the
15 official actions leading up to this appeal.

16 Instead, my analysis be directed basically to the specific but abstract
17 questions that they have required. In the final analysis, of course, it will
18 be the City Council and planning commissioners themselves, or Superior
19 jurisdictions, guided both by the legal principles to be set forth herein and
20 by our own advice to them as their official advisers, who will be
21 required to decide whether or not to proceed, whether or not such an action
22 is lawful and ethical; has been adequately discussed, and whether it is
23 lawful to grant a rezone and proceed without further discussion in this case.
24 Moreover, and quite obviously, no application of these legal principles to
25 this situation can, in any event, properly be made until all of the relevant

1 facts pertaining thereto have been established, and pursuant to the issues
2 that I raised incorporated into impact statement letter 13 requesting further
3 facts, justification, as to the paramount social and economic consequences of
4 the proposed actions. That will be addressed further in the following pages.
5

6 WILL THE CITY DECIDE TO PROCEED ANYWAY AND WHEN THEY NOW HAVE KNOWLEDGE THAT
7 THEIR ACTIONS WOULD BE UNLAWFUL?
8

9 In order to place these questions in proper focus, I believe it would be well
10 to begin my analysis with a review of certain fundamental rules that govern
11 all municipal zoning activities in this state;

12 To begin I have turned to chapter title 365 WAC, and review it here;

13 (DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT)

14 PART SEVEN - RELATIONSHIP OF GROWTH MANAGEMENT PLANNING TO OTHER LAWS.

15 WAC 365-195-700 Background.

16 For local jurisdictions subject to its terms, the Growth Management Act
17 mandates the development of comprehensive plans and development regulations
18 that meet statutory goals and requirements. These plans and regulations will
19 take their place among existing laws relating to resource management,
20 environmental protection, regulation of land use, utilities and public
21 facilities. Many of these existing laws were neither repealed nor amended by
22 the act. This circumstance places responsibilities both on local growth
23 management planners and on administrators of preexisting programs to work
24 toward producing a single harmonious body of law.
25

1 WAC 365-195-710 Identification of other laws.

2 In the development of their comprehensive plans and implementing regulations,
3 cities and counties planning under the act should attempt to identify other
4 statutes and legal authorities affecting subjects addressed by the plans and
5 regulations.

6 WAC 365-195-720 Sources of law.

7 In seeking to identify other relevant legal authorities, planners should
8 refer to sources at all levels of government, including federal and state
9 Constitutions, federal and state statutes, federal and state administrative
10 regulations, and judicial interpretations thereof.

11 WAC 365-195-725 Constitutional provisions.

12 Local plans and regulations adopted under the act are subject to the
13 supremacy principle of Article VI, United States Constitution and of Article
14 XI, Section 11, Washington state Constitution.

15 WAC 365-195-730 Federal authorities.

16 (1) The drafting of plans and development regulations under the act should
17 involve a consideration of the effects of federal authority over land or
18 resource use within the planning area, including:

19 (c) Federal statutes or regulations imposing national standards.

20 WAC 365-195-705 Basic assumptions.

21 Where the legislature has spoken expressly on the relationship of the act to
22 other statutory provisions, the explicit legislative directions shall be
23 carried out. Examples of such express provisions are set forth in WAC 365-
24 195-750.

25

1 RCW 43.21C.030 Guidelines for state agencies, local governments--
2 Statements--Reports--Advice--Information.
3 The legislature authorizes and directs that, to the fullest extent possible:
4 (1) The policies, regulations, and laws of the state of Washington shall be
5 interpreted and administered in accordance with the policies set forth in
6 this chapter, and (2) all branches of government of this state, including
7 state agencies, municipal and public corporations, and counties shall:
8 (a) Utilize a systematic, interdisciplinary approach which will insure the
9 integrated use of the natural and social sciences and the environmental
10 design arts in planning and in decision making which may have an impact on
11 man's environment;
12 (b) Identify and develop methods and procedures, in consultation with the
13 department of ecology and the ecological commission, which will insure that
14 presently unquantified environmental amenities and values will be given
15 appropriate consideration in decision making along with economic and
16 technical considerations;
17 (c) Include in every recommendation or report on proposals for legislation
18 and other major actions significantly affecting the quality of the
19 environment, a detailed statement by the responsible official on:
20 (i) the environmental impact of the proposed action;
21 (ii) any adverse environmental effects which cannot be avoided should the
22 proposal be implemented;
23 (iii) alternatives to the proposed action;
24 (iv) the relationship between local short-term use of man's environment and
25 the maintenance and enhancement of long-term productivity; and

1 (v) any irreversible and irretrievable commitments of resources which would
2 be involved in the proposed action should it be implemented;

3 (d) Prior to making any detailed statement, the responsible official shall
4 consult with and obtain the comments of any public agency which has
5 jurisdiction by law or special expertise with respect to any environmental
6 impact involved. Copies of such statement and the comments and views of the
7 appropriate federal, province, state, and local agencies, which are
8 authorized to develop and enforce environmental standards, shall be made
9 available to the governor, the department of ecology, the ecological
10 commission, and the public, and shall accompany the proposal through the
11 existing agency review processes;

12 (e) Study, develop, and describe appropriate alternatives to recommended
13 courses of action in any proposal which involves unresolved conflicts
14 concerning alternative uses of available resources;

15
16 That being now clear I can begin the brief; Although implemented and
17 regulated by statutory provisions such as those contained in chapter 43.21C
18 RCW, 36.70 RCW, and 36.70A RCW with respect to City or county or regional
19 planning or in chapter 35.03 RCW with respect to incorporated cities and
20 town, the basic source of authority for the adoption of a zoning code by
21 either a county or a city or town (in order to regulate land uses within its
22 territory) is Article XI, § 11 of our state Constitution which provides that:
23 "Any county, city, town or township may make and enforce within its limits
24 all such local police, sanitary and other regulations as are not in conflict
25 with general laws."

1 In accord, *Nelson v. Seattle*, 64 Wn.2d 862, 395 P.2d 82 (1964); *Pierce v.*
2 *King County*, 62 Wn.2d 324, 382 P.2d 628 (1963); and *State ex rel. Miller v.*
3 *Cain*, 40 Wn.2d 216, 242 P.2d 505 (1952). "To the extent that a
4 municipality's exercise of this power in the field of land use zoning is
5 regulated by enabling legislation, it is clear that the procedures set forth
6 in that legislation must be followed." (Ordinance #3100) and *State v.*
7 *Thomasson*, 61 Wn.2d 425, 378 P.2d 441 (1963); *State ex rel. Kuphal v.*
8 *Bremerton*, 59 Wn.2d 325, 371 P.2d 37 (1962); and 8 *McQuillin, Municipal*
9 *Corporations* (3rd ed.) §§ 25.249 - 25.251. In addition, however, it is
10 critical here to note and understand that as with any exercise of the police
11 power, municipal zoning is subject not only to an affirmative requirement
12 implicit in Article XI, § 11 itself that it only be exercised in the
13 interests of the health, safety, morals and general welfare of the people
14 affected, but it is subject, as well to certain negative restraints arising,
15 principally, from the due process and equal protection clauses of both the
16 federal and state Constitutions. As stated in *Peterson v. Hagau*,
17 56 Wn.2d 49, 351 P.2d 127 (1960), with respect to the latter:

18
19 "We reject flatly the argument that the due process and equal protection
20 clauses of the federal and state constitutions do not apply to statutes
21 enacted in the exercise of the police power". And in the words of the court,
22
23 "Otherwise, the result would be to become a police state, and the legislative
24 branch of the government would become omnipotent."
25

1 A discussion should ensue outlining the "economic", "social", and "other",
2 "consequences", of proceeding without attention to that probable result?
3 I do not desire to discuss that, but we must. This is a social issue, and for
4 the future generations of Washington. Applicable rules:

5
6 "The United States supreme court specifically decided that police regulations
7 were subject to the equal protection clause of the fourteenth amendment in
8 Atchison, Topeka & Santa Fe R.R. Co. v. Vosburg, 238 U.S. 56, 59 L.Ed. 1199,
9 35 S.Ct. 675. The reasons for that conclusion were stated as follows:

10
11 "But we cannot at all agree that a police regulation is not, like any other
12 law, subject to the equal protection clause of the Fourteenth Amendment.
13 "Nothing to that effect was held or intimated in any of the cases referred
14 to. The constitutional guaranty entitles all persons and corporations within
15 the jurisdiction of the State to the protection of equal laws, in this as in
16 other departments of government. "It does not prevent classification, but
17 does require that classification shall be reasonable, not arbitrary, and that
18 it shall rest upon distinctions having a fair and substantial relation to the
19 object sought to be accomplished by the legislation".

20
21 And at this stopping point it should be appropriate to again stop and reflect
22 upon our responsibilities; to,
23 "fulfill the social, economic, and other requirements of present and future
24 generations of Washington citizens". 43.21C RCW.

25

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2 Both of the sets of constitutional benchmarks are, moreover, of considerable
3 significance insofar as the validity of any zoning ordinance is concerned.
4 Because zoning regulations result from an exercise of the police power and,
5 thus, may only be adopted in furtherance of the health, safety, morals and
6 general welfare of the people affected, it has generally come to be
7 understood that behind any such regulations there must be elements of
8 proper planning. That is not present here, and the present character in this
9 area of the City is industry, manufacturing, and its hard working people, and
10 while the proposal proceeds to zone for a large scale shopping center and
11 condominiums in an abrupt and swift reversal of those plans. I have stated
12 that our planning has evolved around our industries, (industrial and
13 manufacturing history) in my comment letters.

14 Statutorily, in the case of chapter 36.70 RCW (as under most other modern
15 types of planning enabling legislation) this has led to a requirement that
16 the zoning code of a city operating under this act is to "further the purpose
17 and objectives of a comprehensive plan"

18 Our comprehensive plan states its objective: is to,

19 (ED-C) "maintain and expand the present industrial and manufacturing
20 employment base"

21
22 That I will mention numerous times in this clarification as well as has been
23 the case in the impact statement itself. See, RCW 36.70.570 together with RCW
24 36.70.020 (6), which specifically defines this term to mean "the policies
25 and proposals approved and recommended by the planning agency; (c) as a

1 source of reference to aid in developing, correlating, and coordinating
2 official regulations and controls; and (d) as a means for promoting the
3 general welfare. Stating, "Such plan shall consist of the required elements
4 set forth in RCW 36.70.330 and may also include the optional elements set
5 forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent
6 public and private development and official controls so as to present all
7 proposed developments in a balanced and orderly relationship to existing
8 physical features and governmental functions. (emphasis provided) That is
9 exactly what has not occurred.

10
11 Secondly, because the essence of municipal zoning is classification i.e., the
12 division of land into districts, with the land in each district being
13 subjected to different regulations concerning its use it is inherently at all
14 times in potential conflict with those constitutional guarantees of equal
15 protection which are contained in both the 14th Amendment to the United States
16 Constitution (referred to in the above-quoted excerpt from Peterson v. Hagan)
17 and in Article I, § 12 of our own state Constitution which provides that:

18
19 "No law shall be passed granting to any citizen, class of citizens, or
20 corporation other than municipal, privileges or immunities which upon the
21 same terms shall not equally belong to all citizens, or corporations".
22

23 The question, which we may now begin to consider directly in the light of the
24 foregoing precepts, involves a particular type of zoning activity which has
25 commonly come to be known as "spot zoning" a somewhat misunderstood term.

1 As stated in 51 A.L.R. 3d at p. 266:
2 According to texts, "The student of the 'spot zoning' cases is faced at the
3 outset with a problem of terminology". This results from the fact that the
4 term 'spot zoning' is used in many instances as a label for the conclusion
5 reached by the court, that is, whether or not the zoning ordinance under
6 consideration is valid. Other courts, however, and sometimes the same courts
7 at other times, use the term 'spot zoning' in a merely 'descriptive' sense.
8 And in still other instances the term is used as a mixed 'descriptive' and
9 'legal' term."

10
11 The problem is basically one of semantics. Read or interpreted literally,
12 the phrase "spot zoning" as a purely descriptive term has a tendency to
13 conjure up a vision of any zoning action the effect of which is
14 to carve out a relatively small area situated within a larger whole and to
15 treat that small area differently. But while this is most certainly one of
16 the requisite elements of what we will hereinafter for purposes of clarity
17 refer to as illegal spot zoning, it is by no means the only element, and it
18 cannot be compared to something like a spot of something on your shirt.

19
20 In other words, the mere fact that a zoning ordinance or an amendment thereto
21 does single out for special treatment a small area (the spot) within a larger
22 land unit will not, in and of itself, render the ordinance or amendment
23 invalid. In order to constitute an instance of illegal spot zoning there
24 must also be certain other factors present, like there are here, and upon
25 incontrovertible facts, and the primary reason for our somewhat detailed

1 preliminary review of the constitutional basis for, and restraints upon,
2 municipal zoning activities was to enable us now to place these other factors
3 in proper focus.

4 Although this has not always been fully spelled out by the Washington courts
5 in its decisions dealing with spot zoning, the additional facts which must be
6 shown in order to establish a case of illegal spot zoning stem, by and large,
7 from a combination of (a) the constitutional prohibition against invidious or
8 irrational discrimination which is contained in both the equal protection
9 clause of Amendment 14 to the United States Constitution and in Article I, §
10 12 of the Washington Constitution, and (b) the principle derived from Article
11 XI, § 11, that a basic function of any zoning regulation adopted under an
12 enabling act such as chapter 43.21C RCW and 36.70A RCW is to implement and
13 carry out, rather than to frustrate, an underlying, previously adopted,
14 zoning and comprehensive plan for the orderly development of the subject city
15 or other municipality. Those issues are already into the record created in
16 the proceedings leading up to this motion and brief.

17 Where to begin with, it is explained thoroughly from a standpoint of how we
18 should proceed, 78 Wn.2d 858, J. T. CHROBUCK et al., Respondents, v.
19 SNOHOMISH COUNTY et al., Appellants (No. 41145. En Banc. Supreme Court
20 Feb. 4, 1971 Stating, "The initial imposition of zoning regulation compels
21 the highest degree of public trust upon the governmental processes bringing
22 about such and action".

23 And in the historical precedent I have mentioned,

24 Parkridge, et al, Respondents, v. The City of Seattle, et al, Appellants.

25 89 Wn.2d 454, 573 P.2d 359

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1 "A rezoning action taken without the support of credible evidence is
2 arbitrary and capricious". "The necessary relationship to the public interest
3 will not be presumed in a rezoning".
4

5 "In considering the evidence, the court noted that (1) there is no
6 presumption of validity favoring the action of rezoning; (2) the proponents
7 of the rezone have the burden of proof in demonstrating that conditions have
8 substantially changed since the original zoning; and (3) the rezone must bear
9 a substantial relationship to the public health, safety, morals and welfare".
10

11 Stating, "We, as did the trial court, find the evidence in this matter
12 insufficient to support the rezone. Since the City did not carry the burden
13 of demonstrating such a change in this neighborhood as would justify a rezone
14 for the public health, safety, morals or general welfare, we affirm the
15 holding that the rezone was void".
16

17 To begin with, the lack of factual material tending to prove that conditions
18 have substantially changed since the original zoning is decisive, because it
19 is factual material so inherently necessary to proceed, disclosing reasonable
20 facts in order to be able to make the necessary substantive determination.

21 While as a matter of fact the material that was incorporated into the record
22 in the response to my letter number 13 is indicative only that it (the
23 response) is enough in and of itself to justify reversal and invalidation of
24 the purported ordinances. Nonetheless, I shall proceed with the discussion.
25 We also should emphasize another justification mentioned by the trial court

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1 in its oral opinion. The court said, "the city is required to present a
2 verbatim record of adjudicatory zoning procedures in order to permit the
3 parties to have a full and complete review".
4 This was not done and it should have been done in line with this case. see,
5 BARRIE v. KITSAP COUNTY, 84 Wn.2d 579, 527 P.2d 1377 (1974). The decision
6 clearly states, "We agree". And I want to know what was said to them
7 so that I too may have a full and complete review. That brings us next to the
8 issue of whether there has been a reasonably thorough discussion of the
9 significant aspects of the proposal that are neither remote or speculative,
10 and by the mingling rule of reason that is accepted in nearly all of the
11 cited decisions. It appears to be a rule that will undoubtedly withstand the
12 test of time and later provide another basis for a finding of inadequacy.
13 As outlined at headnote [9] Barrie; Environment - SEPA - Impact Statement -
14 Social and Economic Effects - Necessity. "An environmental impact statement
15 for a proposed action must include a discussion of those social and economic
16 consequences which are neither remote nor speculative". (emphasis supplied)
17 And further in the discussion, reviewing, "RCW 43.21C.030(2)(c)(i) and (ii)
18 require that an EIS disclose both the environmental impact and any
19 unavoidable adverse environmental effects of the proposed action. SEPA
20 declares that the state's intended policy is to
21 "fulfill the SOCIAL, ECONOMIC, and other requirements" of present and future
22 generations of Washington Citizens. (Cap letter theirs) stating further,
23 RCW 43.21C.020(1)(c). with approval; See also notes, THE REQUIREMENT FOR AN
24 IMPACT STATEMENT: A SUGGESTED FRAMEWORK FOR ANALYSIS, 49 Wash. L. Rev. 939,
25 957 (1974) cited, (Social and Economic impacts fall within EIS requirement).

1 (emphasis supplied) Appellants in that case cited several National
2 Environmental Policy Act (NEPA) cases holding that social and economic
3 effects must be considered.
4 citing, R.G., ROCHESTER v. UNITED STATES POSTAL SERV., 541 F.2d 967 (2d Cir.
5 1976) (placing postal service center outside urban core caused increased
6 commuting, loss of inner-city jobs and moving to suburbs, leading to economic
7 and physical downtown deterioration, downturn, and downtown abandonment, all
8 factors contributing to urban decay, city degradation, loss of environmental
9 quality, and blight).
10 Loss of employment with which the citizens are uniquely skilled would result
11 in moving, closure and degradation of engineering or technical institutions,
12 (like University of Washington or Renton technical College) people need to
13 move out, contributing to urban sprawl against objectives; airport becomes
14 fiscally infeasible, few can afford aviation, aircraft may move to nearby
15 Boeing Field; don't need airport, airport is too big and waste of property,
16 causing abandonment, it is rezoned and used for more condo's; Paccar gets
17 tired of traffic nightmare created and moves its global business to a foreign
18 country after 96 years in Renton, Renton nightmarish permit process and
19 arbitrary multiplication of proceedings causes them to lose temper and decide
20 to leave the area move corporate headquarters like Boeing did; its property
21 is rezoned and to build more stores etc., and with the environmental
22 degradation that is caused by it. People cant find a good paying job, go in
23 debt, government has huge deficits, cant pay and must cut services like
24 police, fire, and education; town is dangerous and unfriendly, government
25 fiscal problems snowball and goes bankrupt;

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1 housing becomes unmaintained and undesirable, taxes go up but people cant
2 afford, they become angry, defiant, and some more people yet move away or to
3 to country. And increased commuting, expensive changes to metro and
4 transportation systems, and need fo. rezoning and high intensities elsewhere
5 outside of urban growth area, causing urban sprawl and the need for more and
6 higher taxes. Industry eventually would need to be redeveloped outside growth
7 area with unskewed transportation capacity presumptions that cost more money
8 than can be afforded because a few of wall street has profited with all of
9 the quick money.

10 Alternate discussion that is required should include what is required for
11 making the usage of the proponent property more efficient to use for its
12 presently zoned purpose in the public interest, and that includes,
13 like I have suggested, a systemic improvement in city efficiency, uniformity,
14 and procedures in the interest of citizenry; to effectuate, rather than
15 frustrate, statutory authority, or, mitigation of those impacts.

16
17 Finally, federal guidelines for EIS preparation state clearly that secondary
18 or indirect consequences, including changed patterns of social and economic
19 activities, "should be included". That is also exactly the same type of
20 disclosure that is required here. Citing, 40 C.F.R. 1500.8(a)(3)(ii) (1979).
21 While looking at WAC 197-11, to which the above rule refers and similar to
22 the conjecture that is contained in the response four and seven citing 197-11
23 to my EIS comment letter 13, sectioned as 19, does expressly require a
24 discussion of economic and social effects but in fact the response expressly
25 refuses to do so.

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1 Thus WAC 197-11 and those similar counterproductive assertions and
2 counterparts cited are misconstrued or inconsistent with SEPA policies.
3 citing, RCW 43.21C.02(1)(c). "Because their rules conflict with SEPA policy
4 they are invalid". Cite, SMITH v. GREENE, 86 Wn.2d 363, 371, 545 P.2d 550
5 (1976). WEYERHAEUSER CO. v. DEPARTMENT OF ECOLOGY, 86 Wn.2d 310, 314, 545
6 P.2d 5 (1976) 93 Wn.2d 843, again, BARRIE v. KITSAP COUNTY.
7 Next, Proponent evidently argues that the EIS was not required to address
8 socio-economic impacts, and it evidently claims that questions as to the
9 scope the EIS are not appealable under WAC 197-11-680(3)(a)(ii).
10 As in KIEWIT CONSTR. GROUP v. CLARK COUNTY Aug. 1996 83 Wn. App. 133, 920
11 P.2d 1207 where the court stated, "This argument is without merit". First,
12 the scoping notice states that the EIS will discuss, among other topics,
13 "employment, land use patterns, transportation, and compliance with SEPA and
14 GMA. Those commitments encompass the social and economic effect upon the
15 city. Secondly, that WAC applies to appeals within an administrative agency.
16 I am requesting that specific incorporation under WAC 197-11-680 (3),
17 Third, If it were otherwise, our agency officials could preclude review of an
18 EIS merely by limiting its scope, and that is also blatantly contrary to the
19 provisions of SEPA. That is exactly what has occurred here. WAC 197-11-
20 600(3)(b) provides that a supplemental EIS is required if there are either:
21 "[1] Substantial changes to a proposal so that the proposal is likely to have
22 significant adverse environmental impacts; which is also applicable here, or,
23 [2] New information indicating a proposal's probable significant adverse
24 environmental impacts is required. "(This includes discovery of
25 misrepresentation or lack of factual material disclosure.)"

1 See, *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 34, 785 P.2d
2 447 (1990); *West 514, Inc. v. Spokane County*, 53 Wn. App. 838, 845, 770 P.2d
3 1065, review denied, 113 Wn.2d 1005 (1989).

4 Thus, the rule of reason prevails and it is proper and ethical to ask the
5 Hearing Examiner for, and an order for further and supplemental inclusion
6 discussion and analysis of the social and economic impacts that are neither
7 remote nor speculative, under the rule of reason, and pursuant to good
8 intention and proper loyalty and dedication. Industrial production and value
9 could be diminished further if the transportation infrastructure nightmare
10 plugs up Kenworth, (see impact statement) Housing desirability and downtown
11 Renton retailers, could decline, work, production, and jobs that we know
12 would be given the axe, affecting a decline in our overall capacity, moving
13 away, and closure or reconfiguration of institutions, and I have asked for
14 that discussion and proper disclosure repeatedly and so that the decision
15 makers and reviewers could properly have access to the necessary information
16 necessary to exercise their authority.

17 It is so clear that the decision is erroneous, not to mention arbitrary and
18 capricious so as to probably constitute a "police state" and surely a "spot
19 zone" under the applicable authorities and Constitution and should be
20 disclosed. Our citizenry can sense and attribute hiding those facts to our
21 demise as an economic producer, and an undesirable place to live? That is
22 obvious.

23 It threatens not only legitimate planning and zoning, but the very fabric of
24 our social and environmental values and well being as Americans. Those facts
25 and discussion have not been provided but they must be, like I have asserted.

1 And thoroughly, it is not a minor or insignificant or speculative social and
2 economic consequence. It is the ultimate.

3
4 That ignorance would cause a decay of the very values that distinguish us as
5 a nation of free people, wipe out the confidence in our government and
6 legislation, and as such and without, would be hypocritical and could spell
7 disaster. Combined, these are the questions of social and economic
8 consequences that I would like to have addressed and an answer to. I would
9 like to see us (a) "Fulfill the responsibilities of each generation as
10 trustees of the environment for succeeding generations"; and "fulfill the
11 social, economic, and other requirements of the people of the State of
12 Washington so inherent in our values.

13
14 That being said, I go on to the:

15 RCW 36.70A.365 Major industrial developments. (1) "Major industrial
16 Development" means a master planned location for a specific manufacturing,
17 industrial, or commercial business that:

18 (a) Requires a parcel of land so large that no suitable parcels are available
19 within an urban growth area; "The major industrial development shall not be
20 for the purpose of retail commercial development or multi tenant office
21 parks".

22 No other lot in the City would be suitable for an industrial development of
23 this character possibly causing industrial development in outside areas. It
24 is also right next to the airport. Other examples of what can result are
25 obvious; we could look to other similar projects such as California, to see

1 the sprawl, degradation, and hardships that the tactics employed might
2 produce.

3 That practice of unlimited and arbitrary governmental power makes absolutely
4 no reasonable sense at all. I thought that they were going to expand. In the
5 proceedings, it has been suggested that the intent to rezone might be caused
6 by the "unions" for crying out loud. That is arbitrary and capricious.

7 I thought they said economic competition could not be considered? They have
8 to deal with the "unions" and it is not a subject relevant to a rezone.

9 We now turn to and proceed to the issues raised by these assertions and as to
10 the question of whether the social and economic discussion is adequate. The
11 response 4 and 7 basically refuses the question or request. A review of the
12 response statement shows that it does not go beyond impact of the Proponent.

13 It might have been possible for the respondents to argue that social and
14 economic effects are remote or speculative consequences that need not be
15 covered, but they chose arbitrarily instead to contend that such discussion
16 and disclosure be banned. An analysis is most certainly in order.

17 This appeal has attained the status of "significant" because it has reached
18 that level where, reasonably, it becomes necessary to focus attention once
19 more upon the social and economic environmental aspects of the proposal.

20 And again, the probable impact on the City of Renton and its predisposed
21 disposition as an industrial town is not remote or speculative, as evidenced
22 by the many indications and signage and general design and evolution
23 like I have previously contended. The projected reductions in the jobs and
24 skills that the people of Renton are educated and practiced suggests
25 depressions, disillusionment, and a bleak outlook for citizenry and workers.

1 in contrast to their incontrovertible aspirations, and major impacts,
2 contained and undisputed within the record itself. (see impact statement) By
3 focusing exclusively on the impacts of the proponent the EIS overlooks the
4 real possibility of lost capacity, productivity, and output, income and tax
5 base, along with probable social disharmony and disrespect within Renton for
6 its government and legislation, and hardship for future generations in the
7 city and its probable if not indisputable resultant decline or demise as an
8 economic producer, and while discarded as a harmonious city in which to live.
9 We should all reverse and rely upon our optimism instead, and I believe that
10 we must believe and share along with our strengths and values, like I have
11 suggested. We have been through economic downturns like this before, and made
12 it through because of the very qualities that I have articulated.

13
14 The EIS should point out the probability that the subsequent projects could
15 lead to the demise of our status, as evidenced by experiences in other areas.
16 Maybe we could possibly lend some light upon how things have worked out in
17 California? That is some discussion and disclosure material that would not be
18 remote or speculative and help to determine whether the statement contains an
19 adequate discussion of social and economic consequences.

20 See, An EIS "should disclose the history of success and failure of similar
21 projects" in re: SIERRA CLUB v. MORTON, 510 F.2d 813, 824 (5th Cir. 1975),
22 quoting NATURAL RESOURCES DEFENSE COUNCIL, INC. v. GRANT, 355 F. Supp. 280,
23 288 (E.D.N.C. 1973).

24 While stating, "Because we might disagree on the possible effects, the
25 statement should set forth the responsible opposing views rather than

1 ignoring the potential debilitating impact". Citing, CITIZENS AGAINST TOXIC
2 SPRAYS, INC. v. BERGLAND, 428 F. Supp. 908, 922 (D. Ore. 1977); COMMITTEE
3 FOR NUCLEAR RESPONSIBILITY, INC. v. SEABORG, 463 F.2d 783, 787 (D.C. Cir.),
4 INJUNCTION DENIED, 404 U.S. 917, 30 L. Ed. 2d 191, 92 S. Ct. 242 (1971). And
5 probably because the final proposal devoted more attention to the potential
6 for adverse impact without the proposal.

7 *Testimony at our hearings outlined a misconstrued hair-raising scenario for*
8 *the participants and opponents during the proceedings;*

9 *"Big Box is already allowed in the heavy industrial zone", reiterated. And*
10 *probably believed by those in attendance, but not recognized for the*

11 *misconstruction that it is and contains. 89 Wn. App. 561, [No. 39321-9-1.*

12 *Division One. January 20, 1998.] PETER MCTAVISH, ET AL., Respondents, v. THE*

13 *CITY OF BELLEVUE, Respondent, NORTH WOODRIDGE CREST ASSOCIATION, Appellant.*

14 "Municipal ordinances are the local equivalent of a statute and are therefore

15 construed using the same rules of statutory construction". Citing, City of

16 Spokane v. Vaux, 83 Wn.2d 126, 128-29, 516 P.2d 209 (1973) "Statutes are

17 construed so as to give effect to all provisions and to avoid rendering

18 certain provisions superfluous or absurd".

19

20 Thus, misinformation and lack of factual material was erroneously and

21 prejudicially included. See, 96 Wn. App. 522, HEAL v. HEARINGS BD. "Ambiguous

22 statutes such as the one in the present case, however, should be interpreted

23 in a reasonable manner, and the review should strive to seek out the intent

24 of the legislative body" Odessa Trading Company v. Federal Crop Insurance Co.

25 6 Wn. App. 423.

1 We should have been directed by the purpose of our own code, see, RMC 4-2-020
2 which states as follows:

3 PURPOSE AND INTENT OF ZONING DISTRICTS: A. GENERAL: The purpose statements
4 for each zone and map designation set forth in the following sections shall
5 be used to guide interpretation and application of land use regulations
6 within the zones and designations and any changes to the range of permitted
7 uses within each zone through amendments to the code. Additionally, Reviewing
8 Official approval of projects in the zones is contingent upon the
9 determination that the proposed developments are consistent with the purpose
10 of the zone and the policies of the Comprehensive Plan. (emphasis supplied
11 RMC)

12 Thus, even if the new regulations stand, the proposal still could not result
13 in the hybrid options. Our values and morals are embedded into the code
14 throughout the code. They forgot it. This is the purpose of IH zone RMC;

15 R. INDUSTRIAL-HEAVY ZONE (IH): The purpose of the Heavy Industrial Zone (IH)
16 is to provide areas for high-intensity industrial activities involving heavy
17 fabrication, processing of raw materials, bulk handling and storage,
18 construction and heavy transportation. Uses in this zone may require large
19 outdoor areas in which to conduct operations and produce environmental
20 impacts beyond individual sites that require isolation from more sensitive
21 land uses. Compatible uses which directly serve the needs of other uses
22 permitted within the district are also allowed. Enough said there. That is
23 what we are set up for. See, City of Renton Comprehensive Plan Economic
24 Development element, OBJECTIVE EDC: "sustain and expand the industrial and
25 manufacturing employment base" (It is a fortiori of the comprehensive plan)

1 The exclusive goal was evidently to increase the revenue generated through
2 the collection of sales taxes at the retail level. All that makes any citizen
3 wonder is if the proposal has not been more likely to have been made to
4 correct mistakes made in the City fiscal policy.

5 The EIS response to letter 13 states: "There has been no decision to
6 terminate Boeing company operations in Renton" and that redevelopment or as
7 the case may be, "should Boeing decide to fully terminate its operations in
8 the future", and "This information was used in by the City to develop a
9 single set of proposed comprehensive plan policies that will govern
10 redevelopment of the site" That is not true, and again contrary see,
11 *SCHOFIELD v. SPOKANE COUNTY* 96 Wn. App. 581 (1999) saying, [4] We are guided
12 by general principles. (1) No presumption of validity favoring rezoning
13 exists. (2) Rezone proponents have the burden of proving that conditions have
14 changed since the original zoning. (3) A rezone must bear a substantial
15 relationship to the public health, safety, morals, or welfare. Citing,
16 *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 874-75, 947
17 P.2d 1208 (1997). There appears to be no conscience, or inherent moral
18 redeeming value present in the response, evident in the statement, and it is
19 apparent that the issues that I have raised are being sidestepped by saying
20 it is only considering the "potential" in the response to comment number 21.
21 That should be the direct response. It is not. That again is my issue.

22
23 A concerted planning and renewal effort in the Renton IH zone could create
24 the conditions that would improve the business climate. We could use the
25 thirty three million or so dollars they intend to invest into the rezone

1 improvements to streamline efficiency and productivity in the interest of our
2 citizenry and their families, and for Boeing (the very source of our identity
3 and our pride), by designating it for improvements in furtherance of our
4 comprehensive plan. (Just on the January 1, 2004 a significant article
5 appearing in the south county journal quotes a Boeing leader as stating that
6 there is "big dollar" business available that could keep the Renton Plant
7 humming until 2020) (attached). That is the approach that our State
8 legislators have reasonably and appropriately adopted. I would suggest
9 alternatively a supplementary capital facilities element designed with the
10 intent of improving commercial and government aircraft production. Now that
11 appears to be legitimate, I would approve of that. In the light of that view,
12 it seems to be the high road. Why the inconsistency in Renton? That is an
13 alternative that was not discussed, and it should be.

14
15 The EIS paragraphs that I set out within the comment letter, additionally,
16 does suggest that a concerted planning and renewal effort could improve
17 business conditions for Boeing, in fact, I believe that I articulated it as
18 the best alternative of all, "a coordinated and interdisciplinary process
19 with uniform and justified determinations and just like in the statutes are a
20 few of the words that I have used. The consequences in the present case are
21 anticipated and not remote and speculative and therefore must be discussed
22 prior to a decision.

23 SEE DAVIS v. COLEMAN, 521 F.2d 661, 676 (9th Cir. 1975). The court concluded
24 by saying, "We conclude that the discussion of social and economic effects in
25 the County EIS is inadequate".

1 That is just like here in the present situation, I can only pray and plead
2 for the rule of reason to be noted and disclosed so that our City will not
3 suffer the hardship and environmental trouble that is clear is probably
4 brewing under the rule and the facts of this case.
5 This rezone will in all probability be realized as the biggest mistake ever
6 made by the City of Renton government and result in major and significant
7 environmental difficulties for years to come.
8 That is not something to pass along to future generations.
9 Moving along to the next authority so frequently cited, 75 Wn.2d 715, N. L.
10 SMITH, Appellant, v. SKAGIT COUNTY et al., Respondents EVAN NELSON et al.,
11 Appellants, v. SKAGIT COUNTY et al., Respondents (No. 39675. En Banc. Supreme
12 Court April 17, 1969.) Headnote [9-11] citing Lutz, 83 Wn.2d at 573-74.
13 "Spot zoning is a zoning action by which a smaller area is singled out of a
14 larger area or district and specially zoned for a use classification totally
15 different from, and inconsistent with, the classification of surrounding land
16 and not in accordance with the comprehensive plan". Lutz, 83 Wn.2d at 573-74
17 (citing Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969)). The
18 main inquiry is whether the zoning action bears a substantial relationship to
19 the health, safety, general welfare, and morals of the affected community.
20 While citing, Save a Neighborhood Environment v. City of Seattle, 101 Wn.2d
21 280, 286, 676 P.2d 1006 (1984). And cited with approval, Professor Richard L.
22 Settle. He wrote in WASHINGTON LAND USE AND ENVIRONMENTAL LAW AND PRACTICE,
23 "The vice of "spot zoning" is not the differential regulation of adjacent
24 land but the lack of public interest justification for such discrimination.
25 Where differential zoning merely accommodates some private interest and bears

1 no rational relationship to promoting legitimate public interest, it is
2 "arbitrary and capricious" and hence "spot zoning." According to the court in
3 876 CITIZENS v. MOUNT VERNON Dec. 1997 133 Wn.2d 861, 947 P.2d 1208 again
4 citing, RICHARD L. SETTLE, WASHINGTON LAND USE AND ENVIRONMENTAL LAW AND
5 PRACTICE § 2.11(c) (1983) (footnotes omitted). And saying, "By the same
6 principle, a zoning enactment adopted in proceedings which do not meet the
7 tests of manifest fairness should similarly be held invalid"
8 "In this case, the hearings called for by the statute as an essential
9 precondition to the enacting of zoning changes were so wanting in apparent
10 fairness as to vitiate the legislation emerging from them".

11 When a City Council member announced during the work session (should be
12 contained in the video and audio record of the proceedings)
13 that the proponent had been communicating with the council on a daily basis,
14 it was within its rights. But when, pursuant to this announcement of a closed
15 session, it invited representatives of the Boeing company and powerful
16 advocates of the zoning framework to attend and be heard, but deliberately
17 excluded opponents of the proposed rezoning under that framework, and without
18 any recordation, the hearing and process unfortunately lost one of its most
19 basic requisites - the appearance of elemental fairness. See, "The evil
20 sought to be remedied is not only actual bias, improper influence, or
21 favoritism, but also the curbing of conditions which tend to create suspicion
22 and misinterpretation, and cast a pall of partiality, impropriety, conflict
23 of interest or prejudice over the proceedings". see, J. T. Chrobuck et al.,
24 Respondents, v. Snohomish County et al., Appellants. 78 Wn.2d 858.
25 Deprived of this essential appearance of fairness, the hearing failed to meet

1 the statutory tests. Courts have, in this context, consistently held invalid
2 zoning enactments or amendments thereto which have been enacted without
3 sufficient public notice or which have substantially departed from the
4 statutory norms prescribed for such notice. Annotation. 96 A.L.R.2d 449
5 (1964) Issue: SMITH v. SKAGIT COUNTY 75 Wn.2d 715, N. L. SMITH, Appellant,
6 v. SKAGIT COUNTY et al., Respondents EVAN NELSON et al., Appellants, v.
7 SKAGIT COUNTY et al., Respondents (No. 39675. En Banc. Supreme Court April
8 17, 1969.

9 In order both to exemplify this point and to identify and verbalize the
10 nature of these additional factors let us now turn to the significant
11 historical antecedent cases themselves, beginning with Pierce, Pierce v. King
12 County, 62 Wn.2d 324, 382 P.2d 628 (1963); and State ex rel. Miller v. Cain,
13 40 Wn.2d 216, 242 P.2d 505 (1952) At issue in that case was an amendment to
14 the King county zoning code rezoning two lots within the heart of a
15 neighborhood of single family residences so as to permit those lots to be
16 used for a gasoline service station. In considering the validity of this
17 amendment the court first asked of itself the following questions:

18
19 "Do we have here a spot zoning?"

20
21 "Is it spot zoning of such a character as to be deemed an arbitrary and
22 capricious act?"

23
24 Then, in order to set the stage for its answers to these questions with
25 primary emphasis upon the second one that court quoted at length from several

1 text writers definitions of this term, and while saying:

2

3 "The concept of spot zoning as an evil in the field of municipal growth is
4 well recognized by nearly all authorities".

5

6 WHY IS IT THEN THAT THIS REZONING IN RENTON PROCEEDS WITHOUT SUPPLEMENTAL
7 INFORMATION RELEVANT TO ADVERSE SOCIAL AND ECONOMIC CONSEQUENCES?

8

9 That is my issue. I want to know the answer to that question. I am appealing
10 because this specifically impacts social and economic consequences for
11 probably least 13,000 present Renton citizens and their families, (according
12 to statement) probably many more in the future, productively contributing to
13 society at large, not to mention the probable domino effect that it might
14 have upon our other industries and social and economic institutions,
15 while circumventing the very essence of their most valuable social principles
16 and plans. The alternate available would be to stick together as neighbors,
17 work together, while persevering to combine our objectives and sciences and
18 social designs into public interest like I suggested in the thoughtful
19 composition that I voluntarily presented in the first place. I want to be
20 heard by the City and Proponent, they could recombine their efforts, and with
21 an efficient process, like I have suggested.

22 The decision goes further,

23 "Spot zoning is an attempt to wrench a single lot from its environment and
24 give it a new rating that disturbs the tenor or the neighborhood, and which
25 affects only the use of a particular piece of property and a small group of

1 adjoining properties and is not related to the general plan for the community
2 as a whole, but is primarily for the private interest of the owner or
3 interests of the property so zoned; stating,

4
5 "and it is the very antithesis of planned zoning".

6
7 It has generally been held that spot zoning is improper, and that one or two
8 building lots may not be marked off into a separate district or zone and
9 benefited by peculiar advantages or subjected to peculiar burdens not
10 applicable to adjoining similar lands." Citing, 101 C.J.S., Zoning § 34. The
11 court also said, "A well supported statement is also found in 2 Metzenbaum,
12 Law of Zoning (2d ed.):

13
14 "Spot Zoning" is rarely favorably regarded, because, in too many instances,
15 such practice has been employed in order to aid some one owner or parcel or
16 some one small area, rather than being enacted for the general welfare,
17 safety, health and well-being of the entire community"

18
19 "Spot zoning" merely for the benefit of one or a few or for the disadvantage
20 of some, still remains censurable because it is not for the general welfare"

21 "The noted authority on municipal law, Charles S. Rhyne, states:

22
23 "Spot zoning" has come to mean arbitrary and unreasonable zoning action by
24 the zoning ordinance itself by which a lot or small area is singled out and
25 specially zoned for a use classification totally different and inconsistent

1 with the classification of surrounding land and indistinguishable from it in
2 its character, thus creating a mere "island" or "spot" of non-conforming use
3 within the larger use zone, with a resulting new rating that disturbs the
4 tenor of the neighborhood.

5
6 Our other quality industries would be the one to become a "spot", while the
7 shopping center would be causing real transportation difficulty and then
8 probably creating hardships upon them that would probably cause them to want
9 to relocate out of the zone.

10 None of those social and economic environmental consequences are remote or
11 speculative. The comment from the neighbor at Paccar refers to concern that
12 they themselves would be becoming an "Island" I wonder if he knows that it is
13 such accord with Mr. Rhyne.

14
15 Further "Spot zoning" is thought of as zoning not in accordance with a
16 comprehensive plan, but for mere private gain to favor or benefit a
17 particular individual or group of individuals and not the welfare
18 of the community as a whole, and thus in effect granting by amendment, a
19 special exception from general regulations. "Spot zoning" of this nature has
20 been found unauthorized, discriminatory, and invalid. Again, Rhyne,
21 Municipal Law, chapter 32, p. 810, 825."

22 Finally, applying these principles to the factual situation that was before
23 it, the court in the Pierce case held as follows:

24 where, as in the present situation, the zoning authority by official
25 legislative action designates two lots for a gasoline service station in the

1 heart of a neighborhood of single-family residences already served by
2 commercial and business facilities or subject to be so served in accordance
3 with a comprehensive plan or scheme, such designation is patently a spot
4 zoning; and where the record discloses no basis for such a zoning in
5 furtherance of the public health, safety, or morals, or a contribution either
6 to the general welfare of the people in the area or at large,
7 the zoning is so clearly a spot zoning as to make it arbitrary, capricious
8 and unreasonable, Stating, "It was, and is, therefore, void".

9 Likewise, in the later and much publicized case of Smith v. Skagit County, 75
10 Wn.2d 715, 453 P.2d 832 (1969), "the court invalidated a rezone amendment
11 which was designed to permit the construction of an aluminum plant on
12 otherwise rural Guemes Island after again defining illegal spot zoning in
13 much the same terms as were used in Pierce and Anderson, and then adding,
14 significantly, "that the matter of size in zoning a spot is relative and
15 should be considered in relation to all other circumstances"

16 (emphasis supplied) The court in this case expressed its ruling as follows:

17
18 "The foregoing principles, it appears, forbid this amendment to the zoning
19 ordinance and reveal it as an illegal spot zoning".

20
21 Then, two years later in Chrobuck v. Snohomish County, 78 Wn.2d 858, 480 P.2d
22 489 (1971), the court struck them down as illegal spot zoning. From this
23 acreage the rezone proposed to carve out 635 acres, rezone it, and devote it,
24 by concomitant agreement, to a principal change of conditions in the actual
25 area affected, and the facts upon which the rezoning action was predicated,

1 was Atlantic Richfield's proposal to build an oil refinery upon its property.
2 (pp. 871-2.) That situation, similar to here, where unjustifiable actions
3 are taken to benefit only city revenue and the proponent. Boeing IH land is
4 bordering the airport, Kenworth, Paccar, Stoneway, and other industries, and
5 without the availability of parcels adaptable to those particular uses in an
6 efficient manner elsewhere in the City or region.

7 While the situation here in the instant case is no different in logic, and
8 because the land is bound by the Renton municipal airport, Paccar, Stoneway,
9 Kenworth, and other industrial and manufacturing industries and the purported
10 actions are taken without regard to the comprehensive plan.

11 Before proceeding further, let us pause here to note for the record that not
12 all of the foregoing cases have discussed thoroughly the modern collateral
13 estoppel elements that is also inherently lacking in the responses that were
14 provided within the statement at letter number 13 which I will undoubtedly
15 contents have decisive bearing upon the overall acceptability of the zoning
16 change that the purported zoning will require.

17 However, before we consider those additional cases let us first attempt to
18 summarize the points to be derived from the decisions that we have reviewed
19 so far.

20 To begin with, as we emphasized at the outset, in none of these cases was it
21 the mere existence of a "spot" which dictated the results reached. Instead,
22 it was a combination of this factor, the singling out of a relatively small
23 area within a larger whole for special treatment, together with what we may
24 now in retrospect count as three other factors that caused the court in each
25 case to label the rezoning amendments which were before it as arbitrary and

1 capricious and, hence, as illegal spot zoning.

2 The first additional factor clearly present in all of the cases in which a
3 rezone was invalidated was a significant inconsistency between the land use
4 which would have been allowed in the smaller area if the zoning amendment had
5 been upheld and those uses to which the immediately adjacent area were being
6 put.

7 Secondly, not only were the special land uses which would have been permitted
8 if the rezone had been upheld in these cases inconsistent with the uses being
9 made of land situated in the immediately surrounding area but they were also
10 in conflict with the county's or city's comprehensive plan. Thus, predicated
11 upon an assumption that the underlying purpose of a comprehensive plan is to
12 effectuate the orderly development of the subject area in such a manner as
13 will enhance the health, safety, morals and general welfare of the people
14 affected (accord, Article XI, § 11) the rezone ordinances in each case were
15 demonstrably not calculated to further those interests at least in the
16 absence of any showing of a sufficient change in the overall circumstances
17 affecting the area in question since the initial preparation of that plan to
18 cause the plan itself to be no longer meaningful.

19 And lastly, it seems also to have been apparent to the court in each of the
20 cases in which the rezone was held to be invalid that, as directly prohibited
21 by the express language of Article I, § 12 of the Washington Constitution,
22 the zoning amendments in question would, if allowed, have granted "special"
23 privileges to a single person or group of persons with no countervailing
24 general benefit for the community as a whole, as was observed by the court in
25 *Smith v. Skagit County*,

1 To the extent that this proposal also identifies this same combination of
2 factors as all being involved in each of those cases in which the Washington
3 court has found illegal spot zoning to have existed, we should be in general
4 concurrence with the listing that appears as follows, and while I have
5 emphasized that the economic development element of the comprehensive plan of
6 the City of Renton state that the objective of the plan is to "sustain and
7 expand the current manufacturing and industrial employment base":

- 8
- 9 1. A zone is singled out of the larger city zone and given special treatment.
- 10 2. The classification or use allowed in the new zone is totally different
- 11 from and inconsistent with the classification of surrounding land so as to
- 12 disturb the tenor of the neighborhood and create an inconsistency or conflict
- 13 of use with the uses allowed in the surrounding area.
- 14 3. The action necessary to create the smaller area is taken for the private
- 15 gain of the proponent or group of persons rather than for the general welfare
- 16 of the community as a whole.
- 17 4. The action taken is not in accordance with the comprehensive plan.
- 18 5. There had been no factual material included into the record tending to
- 19 substantiate the conclusion that circumstances have changed in the City to a
- 20 degree requiring reclassification.

21 This leads us, finally to the final elements of my comments, that is
22 articulated and contested within the impact statement letter 13 as well as
23 this appeal, along with the response contained within that document of
24 record, that justifies reversal and/or amendment of the impact statement and
25 the recently purported legislation thereof.

1 In the other Washington cases on zoning matters which I have also asked us to
2 consider in connection with these questions:

3 There can be no doubt that a municipality may impose conditions, either
4 unilaterally, or by contract, in connection with the allowance of a
5 particular land use whether in consequence of a zoning amendment, or
6 otherwise. But the basis for the decision under the rule of reason has not
7 been articulated to resolve these issues and it must be;

8 "Administrative findings of fact must relate how issues involving disputed
9 evidence were resolved so that the parties and an appellate court are
10 informed of the bases for the decision. The existence or nonexistence of
11 determinative factual matters must be the subject of a finding of fact"

12
13 And those factual findings as to the adequacy of the impact statement are as
14 yet unidentified. The only finding available is where the Council (sitting in
15 a legislative capacity) (or is it quasi-judicial?), made the conclusion under
16 the guise of a fact that conditions have substantially changed, and without
17 the requisite supporting evidence.

18 "The findings are inadequate if they state general conclusions after
19 summarizing the parties' positions and the evidence presented". William
20 Weyerhaeuser, et al, Respondents, v. Pierce County, et al, Appellants. 124
21 Wn.2d 26.

22 As I have said in the letter, in all probability there would be no further
23 economic growth after the build out of the proposed projects. Without even
24 discussing the fact that administrative findings are absent in this case,
25

1 Rule of reason:

2 "Implicit in the statute is the requirement that the decision makers consider
3 more than what might be the narrow, limited environmental impact of the
4 immediate, pending action. The agency cannot close its eyes to the ultimate
5 probable environmental consequences of its current action". CHENEY v.

6 MOUNTLAKE TERRACE 87 Wn.2d 338, 552 P.2d 184 See also, Eastlake Community
7 Council v. Roanoke Associates, Inc., 82 Wn.2d 475, 513 P.2d 36 (1973);
8 Loveless v. Yantis, 82 Wn.2d 754, 513 P.2d 1021 (1973).

9 Thus, and the basis of the conclusion on the other hand, it is impractical if
10 not impossible to identify and evaluate every remote and speculative
11 consequence of an action. The mandate of SEPA does not require that every
12 remote and speculative consequence of an action be included in the EIS. The
13 adequacy of an EIS must be judged by application of the rule of reason.
14 This is the approach adopted by the federal courts. See, Trout Unlimited v.
15 Morton, 509 F.2d 1276, 1281 (9th Cir. 1974); Natural Resources Defense
16 Council, Inc. v. Morton, 458 F.2d 827, 837 (D.C. Cir. 1972) This is
17 consistent with the (CEQ) Council on Environmental Quality Guidelines and the
18 frequently expressed view that adequacy of the content of the EIS should be
19 determined through use of a rule of reason. A reasonably thorough discussion
20 of the significant aspects of the probable environmental consequences that
21 are neither remote nor speculative is required by an EIS. (Citations
22 omitted.) The social and economic consequences of unconstitutionality and
23 willful and unreasoning action taken to benefit interests outside of that of
24 the community are tremendous. The application of the rule of reason is
25 illustrated by a comparison in Trout Unlimited v. Morton, supra,

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1 with the case of City of Davis v. Coleman, 521 P.2d 661 (9th Cir. 1975).
2 Trout Unlimited involved an authorized project, but only after a finding of
3 probable "feasibility" by the Secretary of Interior and appropriation of
4 funds by Congress. Is the plan economically feasible to future generation of
5 Washington citizens? We don't know, no facts are provided inclusive of
6 review within the administrative record. We will need those facts here. And I
7 am having a good deal of legal difficulty arguing the points with no
8 administrative findings and conclusions.

9
10 What will be the probable social consequences of having no industrial or
11 manufacturing activity in a town that is proud of its heritage of hard work,
12 productivity, and objectivity and while it is known the rezoning occurs
13 outside the perimeter of lawful and Constitutional municipal police powers?

14
15 That is supplementary information that is necessary.

16
17 As for the evidence to demonstrate the circumstantial evidence applicable to
18 the facts in our case, we need look no further than response number one to
19 the comment letter number 13 that is contained into what is been incorporated
20 into the final impact statement.

21
22 "Boeing has no plans and has made no decision to change their operations for
23 the foreseeable future".

1 That sums it up, why do they want to rezone it then? There is some factual
2 disclosure here that someone or somebody is not disclosing. Again.

3
4 "The adequacy of an environmental impact statement is a question of law that
5 is subject to de novo review both on the administrative level and by the
6 courts".

7 Citing, Klickitat County Citizens Against Imported Waste (Citizens) v.
8 Klickitat County, 122 Wn.2d 619, 632, 860 P.2d 390 (1993), 866 P.2d 1256
9 (1994) and "B", Adequacy of EIS/Supplemental EIS Requirement[3] The legal
10 adequacy of an EIS is tested under the "rule of reason." Citing, Citizens,
11 122 Wn.2d 619; Solid Waste Alternative Proponents (SWAP) v. Okanogan County,
12 66 Wn. App. 439, 442, 832 P.2d 503, review denied, 120 Wn.2d 1012 (1992).
13 Stating,

14 "To be adequate, an EIS must present decisionmakers with a "reasonably
15 thorough discussion of the significant aspects of the probable environmental
16 consequences" of the agency's decision. Citizens, 122 Wn.2d at 633 (quoting
17 Chesey v. City of Mountlake Terrace, 87 Wn.2d 338, 344-45, 552 P.2d 184
18 "That is, an EIS must provide sufficient information to allow officials to
19 make an informed and reasoned choice among alternatives".

20 SWAP, 66 Wn. App. at 442. while stating, "This rule has been characterized as
21 a broad, flexible cost-effectiveness standard." Citizens, 122 Wn.2d at 633
22 (quoting R. SETTLE, THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT: A LEGAL
23 AND POLICY ANALYSIS § 14(a)(1), at 156 (4th ed. 1993)).

24 My contention that the ordinance violates Art. 11 § 11, 1, 5 12 of our
25 Constitution, for the reason that it results in "spot zoning," is predisposed

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1 of as thoughtful, and by our determination that the standards and criteria
2 applied directly to the facts of record is sustainable and the above-quoted
3 excerpts relative to Article I, § 12 and spot zoning, accordingly, is merely
4 my verbalization of the last aspect of that conclusion to that is in
5 question, and that the City Council should be subsequently informed of the
6 quality of this paper, with a recommendation for invalidation and
7 determination that the discussion and disclosure of the probable significant
8 aspects of the proposal have been omitted, and should not be, and should be
9 informed prior to making any kind of decision or determination on this matter
10 the social and economic and legal implications so inherent in this act, along
11 the unlawfulness and unconstitutionality of the matters, and with the re-
12 allegation of issues and alternatives contained in the original appeal, I
13 contended in my letter consisting of the following:

14
15 III. SUMMARY

- 16 1) That this statement should include further discussion and disclosure of
17 the social and economic consequences that are neither remote nor speculative;
18 2) That the felt necessities of the public, the ethical and moral demands of
19 social and economic institutions, and even the prejudices that we might share
20 have a good deal more to do with it;
21 3) That should include a process of convenience, efficiency, uniformity,
22 interdisciplinary fairness, that embody a successful and prosperous future
23 for all of Renton citizenry and future generations of Renton citizenry; and
24 without frustrating the provisions of Washington law or the wholesome values
25 and comprehensive planning assumed by Renton citizenry;

1 4) That a demonstration of the existence or non existence of determinative
2 factual matters are necessary as a precedent to proceed, and a determination
3 that circumstances have substantially changed to a degree justifying rezoning
4 is necessary in order to satisfy the requirements underlying prongs of legal
5 justification under our laws and constitution.

6 5) That because the proposal is unjustifiable and based upon unreasonable,
7 untenable grounds, further supplementary reasoned disclosure and discussion
8 should occur, along with amendment and the requisite supplementary impact
9 statement and public participation in order to observe our statutory
10 objectives, and because of its significance;

11 6) That a systematic, interdisciplinary approach should be adopted and while
12 observing the proper requirements of legitimate statutory construction, with
13 disclosure, and discussion of the benefits a possible systemic improvement
14 and possible compromise made for the benefit of our community and the
15 proponent; using the principles and values and morals so inherent in our
16 community and in the context of this appeal are necessary;

17 7) That the basis and rationale for staff decision not to include the
18 identity of the information in the record that supports its decision to
19 depart from science-based recommendations is unreasonable; and it must
20 explain its rationale for departing from science-based recommendations;

21 8) That they must articulate the affect of cumulative transportation and
22 other impacts caused by the proposal upon citizens; describe the fiscal
23 consequence and utility inherent in its policy; that discuss the specific
24 aspects of 82.02 RCW while proceeding with an amended capital facilities
25 element;

1 and address the alternate lawful procedures used to lawfully impose fees and
2 conditions;

3 9) That they should otherwise articulate the rationale for their decision to
4 depart from the nexus and proportionality limits so inherent in our national
5 belief in due process;

6 10) That a demonstration that a contract or development agreement undertaken
7 for purpose of the rezone complies with 58.17 RCW and contains the necessary
8 elements required for the formation of a contract or agreement including,
9 legal terms, conditions, subject matter, parties and promise, and a price or
10 consideration;

11

12 All of this being stated, I will now proceed to discuss the fee and capital
13 facilities subjects, and issues that I have raised in much of the same
14 context and principle within this motion and within the impact statement.

15 To begin with, the discussion that needs to ensue stems from what is and has
16 been the arbitrary enactment and construction of impact fee ordinances in the
17 City of Renton under the growth management act (GMA), its implications on the
18 social and economic well being of citizens, and again, a discussion of the
19 citations of law and statutory authority that should be used to adopt or
20 amend those ordinances. A preliminary review of a few elements of our
21 statutes is applicable here and is as follows:

22

23 RCW 36.70A.070 Comprehensive plans--Mandatory elements.

24 The comprehensive plan of a county or city that is required or chooses to
25 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive

1 text covering objectives, principles, and standards used to develop the
2 comprehensive plan. The plan shall be an internally consistent document and
3 all elements shall be consistent with the future land use map.

4 A comprehensive plan shall be adopted and amended with public participation
5 as provided in RCW 36.70A.140.

6 Each comprehensive plan shall include a plan, scheme, or design for each of
7 the following:

8 (3) A capital facilities plan element consisting of: (a) An inventory of
9 existing capital facilities owned by public entities, showing the locations
10 and capacities of the capital facilities; (b) a forecast of the future needs
11 for such capital facilities; (c) the proposed locations and capacities of
12 expanded or new capital facilities; (d) at least a six-year plan that will
13 finance such capital facilities within projected funding capacities and
14 clearly identifies sources of public money for such purposes; and
15 (e) a requirement to reassess the land use element if probable funding falls
16 short of meeting existing needs and to ensure that the land use element,
17 capital facilities plan element, and financing plan within the capital
18 facilities plan element are coordinated and consistent.

19 RCW 36.70A.130 Comprehensive plans--Review--Amendments.

20 (1)(a) Each comprehensive land use plan and development regulations shall be
21 subject to continuing review and evaluation by the county or city that
22 adopted them. (some text omitted) and, (b) Any amendment of or revision to a
23 comprehensive land use plan shall conform to this chapter. Any amendment of
24 or revision to development regulations shall be consistent with and implement
25 the comprehensive plan.

1 And further in the light of Planning goals as required by SEPA,
2 Again, 43.21C.020 reading, (2) In order to carry out the
3 policy set forth in this chapter, it is the continuing responsibility of the
4 state of Washington and all agencies of the state to use all practicable
5 means, consistent with other essential considerations of state policy, to
6 improve and coordinate plans. (parts omitted)

7 RCW 36.70A.020 Planning goals.

8 The following goals are adopted to guide the development and adoption of
9 comprehensive plans and development regulations of those counties and cities
10 that are required or choose to plan under RCW 36.70A.040. The following
11 goals are not listed in order of priority and shall be used exclusively for
12 the purpose of guiding the development of comprehensive plans and development
13 regulations:

14 (5) Economic development. Encourage economic development throughout the
15 state that is consistent with adopted comprehensive plans, promote economic
16 opportunity for all citizens of this state, especially for unemployed and for
17 disadvantaged persons, promote the retention and expansion of existing
18 businesses and recruitment of new businesses, recognize regional differences
19 impacting economic development opportunities, and encourage growth in areas
20 experiencing insufficient economic growth, all within the capacities of the
21 state's natural resources, public services, and public facilities.

22 (11) Citizen participation and coordination. Encourage the involvement of
23 citizens in the planning process and ensure coordination between communities
24 and jurisdictions to reconcile conflicts.

1 (12) Public facilities and services. Ensure that those public facilities and
2 services necessary to support development shall be adequate to serve the
3 development at the time the development is available for occupancy and use
4 without decreasing current service levels below locally established minimum
5 standards.

6 RCW 82.02.050 Impact fees--Intent--Limitations.

7 (1) It is the intent of the legislature:

8 (a) To ensure that adequate facilities are available to serve new growth and
9 development;

10 (b) To promote orderly growth and development by establishing standards by
11 which counties, cities, and towns may require, by ordinance, that new growth
12 and development pay a proportionate share of the cost of new facilities
13 needed to serve new growth and development; and

14 (c) To ensure that impact fees are imposed through established procedures and
15 criteria so that specific developments do not pay arbitrary fees or
16 duplicative fees for the same impact.

17 RCW 82.02.020 State preempts certain tax fields--Fees prohibited for the
18 development of land or buildings--Voluntary payments by developers
19 authorized--Limitations--Exceptions.

20 "Except as provided in RCW 82.02.050 through 82.02.090, no county, city,
21 town, or other municipal corporation shall impose any tax, fee, or charge,
22 either direct or indirect, on the construction or reconstruction of
23 residential buildings, commercial buildings, industrial buildings, or on any
24 other building or building space or appurtenance thereto, or on the
25 development, subdivision, classification, or reclassification of land".

1 In accord, "if there is any doubt as to the meaning of a tax statute, it must
2 be construed against the taxing power". see, Foremost Dairies, Inc. v. State
3 Tax Commission, 75 Wn.2d 758, 453 P.2d 670, 97 Wn.2d 804. There is no doubt
4 here. Hillis Homes, Inc., Respondent, v. Snohomish County, et al, Appellants.
5 Jack W. Cory, et al, Respondents, v. San Juan County, et al, Appellants. 97
6 Wn.2d 804, 650 P.2d 193.

7 "Under Washington Constitution article 7, § 5, a city's taxing power depends
8 upon an express delegation of authority by the constitution or a statute; it
9 cannot be implied from general grants of police power under article XI § 11".
10 and, "Local "development fees" are properly characterized as taxes if their
11 primary purpose is not regulation but the raising of revenue to accomplish
12 public benefits". I would presume that the our state would be the only agency
13 able to mitigate the on-ramps and tunnels and freeway and arterials with
14 taxes, and that the subject cumulative impacts caused by the projects would
15 be subject to those taxes. Our courts have spoken, quote: "Neither RCW 58.17,
16 SEPA nor any other statute authorizes the City to impose a tax on new
17 developments to raise revenue to offset the costs of providing services
18 required by the increased population. Cite: Hillis Homes, v. Snohomish
19 County, 97 Wn.2d 804, 650 P.2d 193 It was then that the appellate courts of
20 this State cited with approval the Oregon case of Haugen v. Gleason, 226
21 Or.99, 104, 359 P.2d 108 (1961) which characterized a tax as an imposition
22 imposed "to accomplish desired public benefits which cost money". Our courts
23 have stated: quote: "Quite simply, the municipal body cannot shift the social
24 costs of development under the guise of a regulation. Such cost shifting is a
25 tax, and absent specific legislative pronouncement, the tax is impermissible

1 and invalid. Cite: Margola Associates, et al, Appellants, v. The City of
2 Seattle. Respondent. 121 Wn.2d 625, P.2d 23 "The City only has the right to
3 impose those conditions that it can show and establish are made in
4 furtherance of the same legitimate governmental objective as would be
5 advanced as justification for prohibiting the use" and that "there must be a
6 rough proportionality" and a "site specific individualized determination"
7 Identifying specifically the improvement that must be made as a result of the
8 direct impact of the proposal, cite, Nollan v. California Coastal Commission,
9 483 U.S. 825, 834, 107 Supreme Court 3141, 97 L. Ed. 2d 677 (1987); Unlimited
10 v. Kitsap County, 50 Wn. App. 723, 750 P.2d 651, review denied, 111 Wn.2d
11 1008 (1988); Burton v. Clark County, 91 Wn. App. 505, 958 P.2d 343 (1998).
12 Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304
13 (1994); Sparks v. Douglas County, 127 Wn.2d 901, 904 P.2d 738 (1995); Burton,
14 91 Wn. App. at 523. R/L Assocs., Inc. v. City of Seattle, 113 Wn.2d 402,
15 409, 780 P.2d 838 (1989). quote:
16 "If the City cannot make such a showing...the assessment is invalid"
17 A local legislative body may not condition its approval of a preliminary plat
18 application on the applicant's making specified improvements to a street, or
19 road unless the local legislative body establishes (1) an essential nexus
20 between a legitimate governmental objective and the specified improvements.
21 Benchmark, v. the City of Battle Ground, . 103 Wn. app. 721 December 15, 2000.
22 stating, "The essential nexus test is, in short, a "means-end" equation,
23 intended to limit the government's bargaining mobility in imposing permit
24 conditions on individual property owners-whether they consist of possessory
25 dedications or the exaction of cash payments-that, because they appear to

1 lack any evident connection to the public impact of the proposed land use,
2 may conceal an illegitimate demand-may, in other words, amount to "out-and-
3 out . . . extortion". again citing, Nollan; [483 U.S. at 8371].

4 see also citing, Ehrlich v. City of Culver City, 512 U.S. 1231, 114 S. Ct.
5 2731, 129 L. Ed. 2d 854 (1994).

6 These rules being outlined above, we can now begin to discuss the elements of
7 my appeal relating specifically to these foregoing precepts. The qualm that
8 appears with the amendment to the code of the City is with regard to the
9 cumulative impact considerations that would be avoided by only requiring
10 impositions according to SEPA, and the combined probable (unlawful)
11 difficulty of imposing under SEPA rules and without amendment to the
12 mandatory capital facilities element required by the GMA, and as well as the
13 most obvious, the fact that I have been subjected to fees myself where there
14 had been no special benefit conferred that is not required by the public at
15 large, and without an articulation of the identity of the specific
16 improvement that must be made as a result of the direct impost of the
17 proposal, and the idea, that I would pay a duplicative fee or tax for impacts
18 that might result from impacts caused by other developments.

19
20 Who will pay for the improvements that should have been identified with a
21 legitimate transportation analysis when a developer comes and buys the
22 properties and contends that impositions fall outside the nexus and
23 proportionality limits because they are not included into the capital
24 facilities element?

25

1 Upon which is my most thoughtful concern that the tendency of regulation not
2 in compliance with nexus and proportionality limits is to frustrate, rather
3 than effectuate provisions of the legislature because it may be subject to
4 hearings board or superior court review and the consuming of time and
5 resources so obviously and desperately needed by those doing business within
6 this city?

7
8 Those are issues that are properly before the Hearing Examiner in this case,
9 because again, they are issues I raised in my appeal and comment letters,
10 disclosure and discussion of these issues should ensue because they are
11 significant issues of social and economic importance as well, that
12 significantly affect the quality of the environment as outlined by the
13 discussion in the above pages. To be sure, fees must be imposed under the
14 umbrella of a mandatory capital facilities element outlining future needs and
15 required legal provisions, and an ordinance in compliance with 82.02 RCW, to
16 ensure that those necessary transportation and fire facilities are available
17 at the time the developments are ready for occupancy. Again, as has been the
18 case in the past, long appeals, and irrational and invidious determinations
19 destroy our economic and social and environment and have led to the company
20 and people that we are most proud of wanting to leave. And like I have
21 outlined, it is probably for one because of the arbitrary and unreasonable
22 and unlawful fee and capital facilities ordinances and administrative
23 constructions. Renton citizens do not approve of an unmitigated
24 transportation nightmare first, and then political wrestling for more
25 taxation later exacted from a citizenry that would become more depressed and

1 disillusioned, and neither do the provisions of state legislative enactments.
2 again, BARRIE v. KITSAP COUNTY, 84 Wn.2d 579, 527 P.2d 1377 (1974)

3 "An environmental impact statement for a proposed action must include a
4 discussion of those social and economic consequences which are neither
5 remote nor speculative".

6 It is very clear that under ordinance # 3100 adopted by the City Council on
7 the 19th of December in 1994, approved as to form by counsel on 12-13-94 shows
8 that the City already has knowledge of the requirements that I have brought
9 to issue here.

10 Section IV. of that ordinance specifically states,

11 "the transportation fee will be readopted as a growth management fee under
12 the GMA and reviewed periodically thereafter" and further,

13 "When readopted, the legislation shall include such topics as credits,
14 donations, and other factors to be considered" and furthermore,

15 Section III. of the ordinance states, "this fee applies to all new
16 developments that are subject to SEPA review"

17
18 The issue raised here by this appeal is the very essence of the systemic,
19 problematic issues that I have raised for review. The City of Renton has not
20 performed those actions that it said it was going to perform. I do not think
21 it is necessary to further discuss here the "universal contributions" that
22 the fire department purports to exact under ordinance 2913 and its associated
23 administrative policy. They need to be rewritten to observe the procedural
24 requirements of State legislative enactments. That needs to be discussed and
25 disclosed according to all of the authorities and requisites outlined herein.

1 because this is a comprehensive plan and regulation amendment process.

2
3 Although the proposal purports to reduce pollution discharges to a degree
4 that is less than exists at the site at present, I am encouraged by the fact
5 that the proponent has indicated willingness and included a somewhat
6 scientific discussion of their intent to utilize the 2001 Ecology manual or
7 its equivalent to design the projects that they have envisioned.

8 However, the response to my comment has been provided, and no recommendation
9 to revise the code has been adopted indicating that it will be required.
10 Administrative procedures are available for discussion of this subject
11 matter. As follows:

12 WAC 365-195-915 Criteria for including the best available science in
13 developing policies and development regulations. (emphasis supplied)

14 (1) To demonstrate that the best available science has been included in the
15 development of critical areas policies and regulations, counties and cities
16 should address each of the following in the record:

17 (a) The specific policies and development regulations adopted to protect the
18 functions and values of the critical areas at issue.

19 (b) The relevant sources of best available scientific information included in
20 the decision-making.

21 (c) Any nonscientific information--including legal, social, cultural,
22 economic, and political information--used as a basis for critical area
23 policies and regulations that depart from recommendations derived from the
24 best available science.

25

- 1 A county or city departing from science-based recommendations should:
- 2 (i) Identify the information in the record that supports its decision to
3 depart from science-based recommendations; and
- 4 (ii) Explain its rationale for departing from science-based recommendations;
5 and
- 6 (iii) Identify potential risks to the functions and values of the critical
7 area or areas at issue and any additional measures chosen to limit such
8 risks.

9 Stating, "State Environmental Policy Act (SEPA) review often provides an
10 opportunity to establish and publish the record of this assessment".

11 It is true that in all probability that it is just like the other ordinances,
12 never implemented and the environment and species that will suffer. Although
13 this opportunity is now available, reasonable and thorough discussion and
14 disclosure is again foregone, and outside the rule of reason.

15

16 A Hearings Board or Superior Court Petition for Review causing further harm
17 to the ability to execute competitive strategies in global markets, and all
18 over again caused by the failure of the impact statement itself to discuss
19 and disclose the probable significant social and economic and other
20 consequences that are neither remote or speculative. No actions were taken or
21 evidently even considered.

22 A petition is most definitely not a speculative possibility, considering the
23 non-compliant sections of Renton code described here it is a probable one.
24 And in all reality, that probability does not need to be discussed any
25 further here. A remand and supplementary impact statement is necessary, and