



# SEGALE PROPERTIES

A LIMITED LIABILITY COMPANY

COMMERCIAL • INDUSTRIAL • AGRICULTURAL • NATURAL RESOURCES

August 21, 2012

City of Tukwila Planning Commission  
6200 Southcenter Boulevard  
Tukwila, WA 98188

RE: Tukwila Urban Center Plan

Dear Commissioners:

This letter is submitted for the record for the public hearing on the Tukwila Urban Center Plan (the "TUC Plan"). Segale Properties LLC ("Segale") has several concerns with the TUC Plan. Some concerns are general and relate to the direction the City is headed, others are specific to the text of the TUC Plan documents. Segale supports the City's desire to improve the aesthetics of the City and to encourage mixed-use and residential development. However, Segale is very concerned that the City's approach, the regulations set forth in the TUC Plan code and design guidelines, will have the opposite effect of what is desired.

### Council Directive

The TUC Plan was last presented to the City Council on March 14, 2011. At that time the Council deliberated at length and ultimately directed planning staff to significantly change course with respect to the TUC Plan. The Council had been presented with three options concerning the future of the TUC Plan and the chose the option that would scale back the requirements of the TUC Plan and allow the market to dictate future development rather than the City (see meeting minutes, Council chose option #3 "Reduce the Scope of the Project").

The TUC Plan before the Planning Commission tonight is not consistent with the direction given by the Council. The Council's direction specifically included converting the design standards (which were requirements) into guidelines. Though staff has eliminated some provisions related to applicability of the standards (making application of the code confusing at best), the provisions in the TUC Plan documents are still requirements and all future permitting actions within the TUC will still be subject to design review.<sup>1</sup> It is very unclear how the current TUC Plan can be construed as complying with the Council's directive. If staff's intent was that the provisions of the TUC Plan NOT be requirements, and that future permitting actions not be subject to very strict standards, a major re-write of the TUC Plan is necessary because there can be no doubt as currently written the provisions are requirements, not guidelines.

### Urban Center Requirements

When the Council last considered the TUC Plan, and were presented with three options regarding moving forward, there was a recurring concerns raised by councilmembers: retaining

<sup>1</sup> The provisions of TMC Chapter 18.28 are clearly requirements and 18.28.020.C states "Projects meeting the thresholds for design review shall be evaluated using the corridor based architectural design regulations and the guidelines set forth in the Southcenter Design Manual." This appears to make the guidelines requirements as well, as it is unlikely a project will be approved if the "evaluation" reveals the project is inconsistent with the guidelines.

**EXHIBIT** 11 **DATE** 8.23.12  
**PROJECT NAME**  
TUC Plan  
**FILE NO** 209-008

Urban Center status. Though the concern is legitimate, there is no direct link between the TUC Plan and Urban Center status. Urban Centers are designated by the Puget Sound Regional Council, a similar designation is also set forth in King County Countywide Planning Policies (KCCPP). Tukwila has received both designations. Being designated an Urban Center entitles a city to certain priority status with respect to funding for transportation and other improvements. Once designated an Urban Center it is expected that a city will make planning decisions that allow an intense urban level of growth and development. Specifically, a city needs to zone its urban center in order to allow for 15 households per gross acre and 50 employees per gross acre. Note that the city's obligation is a regulatory one, it only needs to make zoning decisions; it need not guarantee a certain level of growth and there is no requirement that the growth targets be met (not within a certain timeline, not ever).

The TUC Plan appears to miss the critical zoning for growth component. The TUC Plan elements are related to design, not housing units or commercial space. It is not clear whether the City, in preparing the TUC Plan, considered its growth targets let alone performed a buildable needs analysis. **The Council was spot-on in relating the TUC Plan with Urban Center designation, but the current TUC Plan fails to consider the KCCPP urban center guidelines and is weighed too heavily toward directing what growth will *look like*, rather than on making policy decision (zoning, infrastructure improvements, incentives, etc.) that will allow for that growth to take place.**

To be clear, Segale places no fault with the City's attempt to make Tukwila a more desirable place to live; we are concerned about the City's approach and the likely unintended consequences of that approach.

### **Creating a Disincentive**

Segale is concerned about the low threshold for applying the new regulations to improvements to nonconforming uses. The TUC Plan relies on a dollar value of improvements to determine whether new regulations apply and the dollar value is very low. The City should either significantly increase the dollar value or replace the threshold with an improvement-specific threshold. The current approach has the potential to impose tens or hundreds of thousands of dollars of improvements on a landlord who simply wants to improve the space for a new tenant. For example:

Landlord owns 100,000 square foot commercial building with five separate leasable spaces. Under current leases Landlord is required to replace the roof. The cost of replacing the roof exceeds 10% of the buildings assessed value (which is very likely). Under current proposed TMC 18.28.020 and 18.28.030, replacing the roof would trigger "design review" and the following requirements:

- Parking
- Landscaping
- Private Frontage & Building Placement
  - Which could potentially require the entire building to be relocated. Think this is a joke; see the attached Walmart/Renton case where a building permit issued to Walmart was challenged because when expanding its building Walmart didn't relocate the building to the street per Renton's code.
- Architectural Design Regulations

In the foregoing situation it is highly unlikely that the landlord is going to repair the roof. The cost of performing the repair will exceed the consideration the landlord received in its leases. This situation could lead to the tenants terminating the lease and moving out of the building (and, potentially, out of the City). For a more in-depth analysis of potential development and re-development related scenarios, and the financial implications of the TUC, read the Technical Memorandum prepared by ECONorthwest. The memorandum supports our contention that the TUC Plan creates a disincentive for current landowners and new developers to invest in the City. The City's approach to creating its desired urban center is to dictate what can be built; such an approach might work if you could demand that building occur, but the City cannot and, therefore, rather than comply with the City's mandates developers will simply choose not to build.

### **Economic Analysis**

After the last public hearing on the TUC Plan the City received a technical memorandum from ECONorthwest, titled "Technical Memorandum: Tukwila Urban Center Implementation Analysis – Final." The memorandum evaluated the City's vision and development regulations of the public review draft of the TUC and provided financial analysis to identify potential adjustments to the plan and development regulations to make the TUC more feasible. A copy of the memorandum is attached for your convenience as it is no longer available on the City's TUC website. ECONorthwest concluded the draft TUC plan and its development code "require a type of development that is not financially viable at this time because of uncertainty in the financial market, and is more likely to be viable even upon the market's return with significant public investment in amenity and infrastructure." Some other key points from the ECONorthwest memorandum include:

-Stakeholder concerns were realistic (including concern that building type is too expensive, the market in Tukwila does not currently generate rents from tenants high enough to make it financially feasible to build required structure types and TUC regulations are likely to discourage any improvements to existing structures causing disinvestment in a successful retail center."

-Higher end residential development and higher end retail rents are more easily obtained in Seattle, and the TUC will have to compete with well-established mixed-use areas in Seattle and other King County locations.

-If the City does require developers to fund all the off-site infrastructure, it may discourage developers from considering the TUC....it may be worth exploring how the City of Tukwila can effectively share some of the off-site burden so that it can achieve the larger goal of securing the envisioned development.

***-Using the TUC regulations ECONorthwest created four prototype developments and a financial pro-forma for each. The conclusions based on the financial pro-formas was that the first three prototypes – multiple story buildings – were more expensive to build than it would be worth and could not get bank financing in any market, nor with some subsidized loan.***

### **Sub-Area Plan**

The Sub-Area plan is too limited. The elements commonly found in sub-area plans are absent in the TUC Sub-Area plan (see attached example Table of Contents from Lynnwood City Center Sub-Area Plan). The City should re-visit its sub-area plan and include an analysis of market/economic impacts, housing, environmental factors, utilities and transportation. Of the recommended new elements of the sub-area plan, utilities and transportation are most important.

## **Legal Concerns**

SEPA - The current proposal does not include documentation consistent with the requirements of the State Environmental Policy Act (SEPA). Has the City performed environmental review for the current or past drafts of the TUC Plan?

Concurrency – Has City considered how the new street regulations will affect levels of service and concurrency? Adding new streets every 800 feet will likely impact the existing transportation system.

Substantive Due Process – Zoning regulations cannot require an individual to shoulder an economic burden, which in justice and fairness the public should rightfully bear. Many of the regulations in the TUC Plan appear to confer a public benefit, rather than legitimately addressing a public harm. The City should let the market dictate what public benefits and amenities property and business owners will provide.

## **Specific Concerns**

Segale has policy-related concerns with specific provisions of the TUC Plan that will be briefly addressed in this letter. Segale also has specific concerns with some of the text of the documents and has suggestions on how to clarify ambiguity. Those concerns are secondary however to our broader concerns with the overall scope and approach of the TUC Plan and it is our hope that the Planning Commission will direct staff to perform a significant overhaul of the TUC Plan, making our specific concerns moot. If the Planning Commission does not direct a significant overhaul of the TUC Plan, it is our desire to meet with staff directly to review our specific concerns.

a. Maximum Block Length & New Streets 18.28.060

Requiring property owners to install new streets every 800 feet does not seem like a coordinated or legal approach to achieving the City's desired grid system. If the City wants to alter its grid system it should do so by making comprehensive changes to its transportation improvement plan and making the necessary public investments in land and infrastructure.

b. New Streets 18.28.120

This provision has dubious legal validity. New streets should not be required unless necessary for access or to meet established transportation levels of service.

c. Public Frontage 18.28.130

Paragraph 8 states that pedestrian scale decorative lighting shall be located 12 to 14' above the finished grade and 20 to 25' in vehicular areas. Requiring an owner of an existing building to install decorative lighting will simply discourage the building owner from performing improvements because of the extra cost associated with this and other unnecessary design-related requirements. Lighting should be necessary for safety, not for aesthetics.

Likewise street furnishings such as benches and trash receptacle are required "where appropriate." This language is vague and requiring benches and furnishings doesn't resolve a public harm, it confers a public benefit. Providing amenities such as benches should be at the discretion of the building owner or tenant.

d. Building Orientation to Street/Open Space 18.28.140

This requirement should absolutely not apply to additions/renovations to existing buildings. Per the KCCPP growth within an urban center is supposed to be encouraged; requiring a building owner who wants to add 20,000 square feet to an existing 100,000 square feet building to RELOCATE the existing building so that it meets building orientation requirements will absolutely stifle growth.

For an example of how a similar requirement has gone awry, read the attached case involving Renton and Walmart (Renton Neighbors for Healthy Growth v. PACLAND).

e. Ground Level Transparency Requirement 18.28.200

This requirement is very problematic when applied to existing buildings. Installation of new or larger windows required to reach the minimum transparency percentage may not be structurally feasible. Where structurally possible, the cost for such work includes both shop-front construction and the resultant expense of requiring an existing tenant to completely re-design their shop floor layout. To apply this rule universally to an entire existing building is cost prohibitive. While it can be dealt with individually (on a tenant by tenant basis) it may result in an unpleasing mix of “old” and “new” storefront entries that could potentially sit side by side

f. Special Corner Feature 18.28.220

It is hard to fathom the legal basis for this requirement as it arbitrarily imposes a significant burden on certain property owners simply for the purpose of conferring a public aesthetic amenity. If the City wants to emphasize certain corners, it should create an incentive for property owners to follow the corner feature guidelines, not requirement adherence.

g. Landscaping Types 18.28.230

Section A.2.b requires pathways to connect the public sidewalk to the front door and to any parking areas. Retrofitting an existing parking lot for this purpose would result in a reduction of parking stalls that would either take the property into a non-conforming state for required parking ratios and, more importantly, limit the property owner in marketing and leasing efforts as certain retail uses would no longer qualify for tenancy in the property due to overall parking counts.

h. General Landscaping 18.28.240

It is surprising to see the City extend its retroactive reach beyond public frontage to “other areas on-premises”. The language being proposed is dictating pruning regulations within a property not just along street frontages. Depending upon how the existing landscaping will tolerate the new pruning regulations, the TUC Plan could require a property owner to replace all landscaping. Additionally the TUC Plan states that existing trees may not be topped for any reason. More often than not, topping is requested / required by the retail tenant to ensure signage visibility. In retail leasing it is all about traffic counts, visibility and parking. We have tenant commitments to ensure a signage sightline from the intersection of Strander and Andover Park West. As a result we do monitor the height of trees in the parking lot area and prune where necessary. The proposed TUC Plan assumes buildings are constructed immediately adjacent to the road

where signage visibility would not be impacted by any trees. Most of the existing strip centers are set back where internal parking lot trees could, and do, impact signage. We agree with the City's goal that care should be taken to preserve the integrity and visual appearance of existing trees, however retail tenants rely on signage and frontage and oftentimes this will drive site selection.

i. Open Space Requirements 18.28.250

It is unclear as to what level of compliance is being expected for pedestrian passage and circulation in existing developed properties. It is likely that the required open space minimum area and provisions needed for walkways is not attainable to maintain compliance with required landscaping areas, parking stall counts, etc.

j. General Parking Requirements 18.28.260

This entire section needs further consideration and review for existing properties. Similar to all of the previous comments the addition of landscape islands and pedestrian circulation routes will trigger parking ratio non-compliance in existing properties.

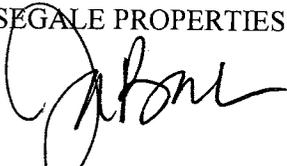
For existing properties the City's continued efforts to reduce current parking counts will very likely result in a Landlord being found in default of parking commitments made in existing lease agreements. The requirement places undue economic hardship on Landlords of previously developed properties and will reduce the tenant pool available to property owners to fill its vacancies.

We appreciate that, in order to respond to our concerns, additional time will be necessary for review and revision of the TUC Plan, but would rather have the City take the time to prepare a workable and reasonable plan. The new TUC plans should also be tested by meeting with actual retailers and multi-use developers (not just consultants), and a test-case block should be designed in more detail to see how it stacks up against the proposed TUC regulations and other existing City codes. Focused economic and infrastructure studies should also be performed, including a study of the impacts on the City's sales tax income of the changes from big-box anchors to small retail shops.

Thank you for this opportunity to share our concerns with you.

Very truly yours,

SEGALE PROPERTIES



Jami Balint

Attachments

Not Reported in P.3d, 168 Wash.App. 1009, 2012 WL 1662472 (Wash.App. Div. 1)

Briefs and Other Related Documents

Judges and Attorneys

NOTE: UNPUBLISHED OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,  
Division 1.

**RENTON** NEIGHBORS FOR HEALTHY GROWTH, Appellant,

v.

PACLAND; Jeff Chambers, P.E.; Bonnell Family, LLC; Peter Bonnell; City of **Renton**, Respondents,  
Wal-Mart Stores, Inc., Intervenor.

No. 66874-9-I.

May 14, 2012.

Appeal from King County Superior Court; Hon. Gain Brian D., J.  
Claudia Macintosh Newman, Bricklin & Newman, LLP, Seattle, WA, for Appellant.

Garmon Newsom II, City of **Renton**, **Renton**, WA, for Respondent.

Charles Edward Maduell, Clayton Paul Graham, Davis Wright Tremaine LLP, Seattle, WA, for  
Respondent Intervenor.

UNPUBLISHED OPINION

LAU, J.

\*1 Wal-Mart Stores, Inc. proposes to expand its **Renton** store by 16,000 square feet. The existing store was built before the current zoning regulations were enacted and is nonconforming in some respects. **Renton** Neighbors for Healthy Growth (RNHG) opposes the expansion, claiming that (1) it illegally expands a nonconforming use and (2) it fails to comply with the city of **Renton's** design regulations. The hearing examiner approved Wal-Mart's proposal with several conditions, and the city council affirmed. RNHG appeals the hearing examiner's decision to approve the expansion under the Land Use Petition Act (LUPA), chapter 36.70C RCW. Because (1) the hearing examiner's interpretation of the relevant code provisions is reasonable, (2) the hearing examiner's unchallenged findings are supported by substantial evidence, and (3) RNHG demonstrates no clear error in the hearing examiner's application of the law to the facts, we affirm.

*FACTS*

Wal-Mart Stores, Inc. retained PACLAND to provide civil engineering services for a proposed store expansion in the city of **Renton** (City). In 2010, PACLAND filed an application with the City for site plan review of a proposal to expand Wal-Mart's existing 134,352 square-foot store by approximately 16,000 square feet. The project would also reduce Wal-Mart's garden center by 4,000 square feet and add 127 parking stalls. The Wal-Mart property was zoned "commercial arterial" and "medium industrial." <sup>FN1</sup> On February 22, 2010, the City accepted PACLAND's application for review.

<sup>FN1</sup>. A majority of the site was zoned "commercial arterial," with a small area on the western part of the site designated "medium industrial." "For the purposes of the Site Plan Review the [Commercial Arterial] standards were used to review the proposal."

The City's Environmental Review Committee reviewed the project application and issued a "Determination of Non-Significance—Mitigated," including six mitigation measures, for the Wal-Mart expansion. No appeals of this determination were filed. The City's Department of Community and Economic Development issued a preliminary report to the hearing examiner. The report indicated that

Wal-Mart's proposal was "not compliant" with several city code provisions but recommended the City approve the expansion subject to several conditions. The hearing examiner held a public hearing for Wal-Mart's site plan application. The City received no public opposition to the project.<sup>FN2</sup> The hearing examiner made extensive findings based on the preliminary report and the hearing testimony. He adopted most of the analysis in the preliminary report and approved Wal-Mart's expansion proposal subject to eleven conditions.

FN2. To the contrary, the City received several letters and a petition with numerous signatures indicating community support for the project.

RNHG failed to submit any comment letters and did not attend the hearing because it was not aware of the proposal at that time. RNHG filed a request for reconsideration, arguing that the project violated several **Renton** Municipal Code (RMC) requirements and illegally expanded a nonconforming use. The hearing examiner denied RNHG's request, concluding there was "no reason to alter the original decision nor the conditions attached to that decision." RNHG also appealed the hearing examiner's decision to the **Renton** city council. After a hearing, the city council's planning and development committee voted to uphold the hearing examiner's decision and recommended that the full city council do the same. The city council adopted the Committee's recommendation and affirmed the hearing examiner's decision.

\*2 RNHG filed a land use petition with the superior court under LUPA. Wal-Mart intervened in the action and moved to dismiss for lack of standing. <sup>FN3</sup> The trial court denied the motion, ruling that RNHG met the RCW 36.70C.060(2) requirements for standing. But the trial court denied RNHG's land use petition on the merits, ruling (1) the City acted within its authority in approving Wal-Mart's site plan, (2) substantial evidence supported the decision, (3) the City properly interpreted and applied its code requirements in approving the site plan, and (4) the land use decision was not an erroneous interpretation of the law or a clearly erroneous application of the law to the facts. The court concluded, "[RNHG] has failed to satisfy the standards of RCW 36.70C.130(1)(a)-(d) and is therefore not entitled to relief." RNHG appeals.

FN3. The respondents initially named in the petition were PACLAND and its contact Jeff Chambers, the property owner Peter Bonnell and Bonnell Family, LLC, and the City. In this opinion we refer to Wal-Mart and the City collectively as "respondents."

## ANALYSIS

### *Standard of Review*

LUPA is the exclusive means of obtaining judicial review of land use decisions, with certain exceptions not applicable here. Friends of Cedar Park Neighborhood v. City of Seattle, 156 Wn.App. 633, 640, 234 P.3d 214 (2010). We review the decision of the "local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals." RCW 36.70C.020(2). Thus, when reviewing a LUPA decision, we stand in the shoes of the superior court, reviewing the ruling below on the administrative record. HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wn.2d 451, 468, 61 P.3d 1141 (2003). Here, because the City Council adopted the hearing examiner's findings of fact and conclusions of law, we review the hearing examiner's decision. See RMC 4-8-100(K)(2) ("Unless otherwise specified, the City Council shall be presumed to have adopted the Examiner's findings and conclusions.").

Under LUPA, a court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in RCW 36.70C.130(1) is met. RNHG cites four standards in its appellate brief:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such

deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts....

Appellant's Br. at 7 (quoting RCW 36.70C.130(1)). Subsections (a) and (b) are questions of law that we review de novo. Phoenix Dev., Inc. v. City of Woodinville, 171 Wn.2d 820, 828, 256 P.3d 1150 (2011). "When reviewing a challenge to the sufficiency of the evidence under subsection (c), we view facts and inferences in a light most favorable to the party that prevailed in the highest forum exercising fact-finding authority," in this case the City and Wal-Mart. Phoenix Dev., 171 Wn.2d at 828-29. This process "necessarily entails acceptance of the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences." " City of Univ. Place v. McGuire, 144 Wn.2d 640, 652, 30 P.3d 453 (2001) (quoting State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce, 65 Wn.App. 614, 618, 829 P.2d 217 (1992)). Under the substantial evidence standard, there must be sufficient evidence to "persuade a reasonable person that the declared premise is true." Phoenix Dev., 171 Wn.2d at 829. We do not weigh the evidence or substitute our judgment for the reviewing official's judgment. Phoenix Dev., 171 Wn.2d at 832. Under subsection (d), the application of the law to the facts is clearly erroneous—and thus reversible—only if we are left with a definite and firm conviction that a mistake has been committed. Phoenix Dev., 171 Wn.2d at 829; Milestone Homes, Inc. v. City of Bonney Lake, 145 Wn.App. 118, 126, 186 P.3d 357 (2008).

#### Standing

\*3 The respondents contend RNHG lacks standing because it failed to attend the public hearing and thus failed to exhaust its administrative remedies. RNHG argues that attendance at the hearing was not required and it otherwise exhausted all administrative remedies required under the RMC.

Outside the Declaratory Judgments Act, standing is an issue that must be raised in the trial court. <sup>FN4</sup> Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 203-04 n.4, 11 P.3d 762, 27 P.3d 608 (2000); see also Baker v. Teachers Ins. & Annuities Ass'n. Coll. Ret. Equity Funds., 91 Wn.2d 482, 484, 588 P.2d 1164 (1979) (where issue of standing was not submitted to trial court, it could not be considered on appeal). Here, the respondents raised the issue below when they moved to dismiss for lack of standing, but the trial court concluded RNHG had standing and denied the motion. The respondents neither cross appealed that ruling nor assigned error to it on appeal. "Failure to cross-appeal an issue generally precludes its review on appeal." Amalgamated Transit, 142 Wn.2d at 202. Review of the record also shows that the respondents raised the standing issue before the hearing examiner and the City Council. The respondents failed to cross appeal either of those decisions even though the hearing examiner and City Council reached the merits of RNHG's arguments and implicitly concluded RNHG had standing. See Caswell v. Pierce County, 99 Wn.App. 194, 197, 992 P.2d 534 (2000) (in LUPA case, when respondents "have not cross-appealed the hearing examiner's conclusion, and the superior court's concurrence" regarding certain issues, the appellate court will not address those issues). Here the respondents waived their standing argument by failing to cross appeal or assign error to the trial court's ruling on standing.

<sup>FN4</sup>. Some of our cases erroneously refer to standing as "jurisdictional" and allow it to be raised for the first time on appeal. But article IV, section 6 of the Washington Constitution does not exclude any causes from the broad jurisdiction of superior courts, meaning Washington courts have few constraints on their jurisdiction. Krieschel v. Bd. of Snohomish County Comm'rs, 12 Wash. 428, 439, 41 P. 186 (1895); Philip A. Talmadge, Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems, 22 Seattle U.L.Rev. 695, 708-09 (1999). Thus, if a defendant waives the defense that the plaintiff lacks standing, Washington courts can reach the merits. Talmadge at 718-19; Tyler Pipe Indus., Inc. v. Dep't of Revenue, 105 Wn.2d 318, 327, 715 P.2d 123 (1986) ("If the issue of standing is not submitted to the trial court, it may not be considered on appeal.") vacated on other grounds, 483 U.S. 232, 107 S.Ct. 2810,

97 L.Ed.2d 199 (1987). A recent decision from our Supreme Court, *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011), states that “[s]tanding is jurisdictional.” But *Knight* refers back to *Chelan County v. Nykreim*, 146 Wn.2d 904, 926, 52 P.3d 1 (2002), and *Nykriem* (putting “jurisdiction” in quotes) refers back to *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 181, 4 P.3d 123 (2000), which does not use the word “jurisdiction” at all, but simply mentions the well-established rule that to *invoke* the superior court's appellate jurisdiction (i.e., jurisdiction the court already possesses), one must strictly comply with any procedural requirements the legislature has established. This does not mean that the litigant's compliance vests the court with jurisdiction or that the litigant's lack of compliance divests the court of jurisdiction. Our Supreme Court has warned against the type of casual and imprecise use of the term “jurisdiction” that occurs in *Knight*. See *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994).

#### “ Vesting ”

The parties dispute which version of the RMC applies in our review.<sup>FN5</sup> RNHG argues that Wal-Mart “vested to” the former version of the RMC that was in effect at the time the City accepted Wal-Mart's site plan review application for review in February 2010. Appellant's Reply Br. at 39. It argues that all review was based on application of the former RMC<sup>FN6</sup> and we should review the hearing examiner's decision under that version. Wal-Mart argues that a “site plan application does *not* trigger vesting,” and thus, the former RMC provisions do not apply to our review. Resp't's Br. at 18.

<sup>FN5.</sup> The RMC has been amended several times since the City accepted Wal-Mart's site plan review application in February 2010. Relevant to this opinion, several RMC provisions were amended in March 2010, after the City accepted review but before the hearing examiner made his decision.

<sup>FN6.</sup> For clarity, we refer to the RMC provisions in effect in February 2010 as the “former RMC” and to the amended RMC provisions in effect at the time the hearing examiner made his decision simply as the “RMC.”

Washington's vested rights doctrine “entitles developers to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed....” *Abbey Rd. Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009). RCW 19.27.095(1) provides:

A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

\*4 We conclude the vested rights doctrine does not apply here. RNHG cites no authority applying the vested rights doctrine when determining which version of a local ordinance applies to a hearing examiner's decision on a site plan review application.<sup>FN7</sup> See *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 777 n.2, 954 P.2d 237 (1998) (“The City cites no authority for this proposition and, thus, it is not properly before us.”) (citing RAP 10.3(a)(5); *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 166, 795 P.2d 1143 (1990)). The issue here is which version of the RMC applies to our review of the hearing examiner's decision, not whether Wal-Mart had vested development rights by virtue of its site plan review application.

<sup>FN7.</sup> Even if we were asked to decide whether Wal-Mart's development rights “vested,” they did not in this case. In *Abbey Road*, our Supreme Court made clear that absent a local vesting ordinance specifying an earlier vesting date, development rights vest only

upon filing a complete building permit application and do *not* vest merely upon filing a site plan review permit application. Abbey Rd., 167 Wn.2d at 252-61. Here Wal-Mart filed a site plan review application, not a complete building permit application. The RMC mirrors state law on vesting and establishes no earlier vesting date. See RMC 4-8-060 (B). Thus Wal-Mart's application does not confer vested development rights.

We stand in the shoes of the superior court, reviewing the hearing examiner's ruling below on the administrative record. HJS Dev., 148 Wn.2d at 468. The City amended portions of its urban design regulations in March 2010, before the hearing examiner heard this case. The amended version thus applied to the hearing examiner's original decision on May 13, 2010, and his reconsideration on June 10. We apply the amended RMC in effect when the examiner made his decision. See Phoenix Dev., 171 Wn.2d at 834-36 (in reviewing City's denial of rezone application, court applied version of Woodinville Municipal Code in effect when City made its decision); Woods v. Kittitas County, 162 Wn.2d 597, 617-25, 174 P.3d 25 (2007) (in reviewing county board of commissioners' approval of rezone application, court applied version of Kittitas County Code in effect when Board made its decision); City of Medina v. T-Mobile USA, Inc., 123 Wn.App. 19, 29-33, 95 P.3d 377 (2004) (in reviewing hearing examiner's approval of a variance application, court applied version of Medina Municipal Code in effect when examiner made his decision).

RNHG argues that because the table incorporated into the hearing examiner's decision "parallels the version of RMC 4-3-100 that [was in effect at the time Wal-Mart applied for its site plan approval]," the hearing examiner reviewed Wal-Mart's proposal under that former version rather than the amended version that he should have used. Appellant's Reply Br. at 39. Thus, according to RNHG, "all review in this case was based upon the application of the previous version of the law" and we should use the former version. Appellant's Reply Br. at 38. But RNHG failed to raise this argument in its request for reconsideration, its notice of appeal or briefing to the city council, or during the appeal hearing before the city council in August 2010. RNHG cited the *amended* version of the RMC—particularly portions of RMC 4-3-100(A), which it now argues are inapplicable—in its opening and reply briefs in its appeal to the city council. Those briefs were filed well after the hearing examiner ruled on RNHG's request for reconsideration. RNHG thus had sufficient time to raise the issue before the city council and failed to do so.

\*5 RNHG also failed to raise the issue in its LUPA petition or its trial brief, despite citing the former version of the RMC. RNHG raised its argument for the first time in its reply brief in the superior court. But we review the hearing examiner's action, not the proceedings before the superior court, on the basis of the administrative record de novo. HJS Dev., 148 Wn.2d at 468. In LUPA cases, we may refuse to consider arguments raised for the first time on review. RAP 2.5(a); First Pioneer Trading Co., Inc. v. Pierce County, 146 Wn.App. 606, 617 n.5, 191 P.3d 928 (2008). Here, RNHG did not challenge the version of the RMC applied before the hearing examiner or the city council and provides no explanation why the argument could not have been made earlier. Thus, RNHG did not put either the hearing examiner or the council on notice of its challenge to the version of the RMC applied. See Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 869, 947 P.2d 1208 (1997) ("Our cases require issues to be first raised at the administrative level...."); Exendine v. City of Sammamish, 127 Wn.App. 574, 113 P.3d 494 (2005) (trial court properly refused to allow LUPA petitioners to raise a new argument not raised or argued before the hearing examiner). Because RNHG failed to raise the issue of whether the hearing examiner applied an incorrect version of the RMC before either the hearing examiner or the city council, we decline to consider that challenge now. <sup>FN8</sup>

<sup>FN8</sup>. Even if we considered RNHG's argument, RNHG cites to nothing else in the hearing examiner's decision or elsewhere in the record that indicates which version of the code he applied, and on reconsideration, the hearing examiner cited the amended version, showing he reviewed his decision under the amended version. (Clerk's Papers (CP) at 77-78 (citing amended RMC 4-3-100(A)(2)). The hearing examiner concluded on reconsideration that the "[amended RMC] provisions cited above allow sufficient latitude to permit the proposed expansion as conditioned in the decision." Given our limited

review, we are unable to conclude the hearing examiner applied an incorrect version of the law.

*" Verities on Appeal "*

The parties also dispute whether the hearing examiner's findings are verities on appeal in this case. RNHG argues that under LUPA, notice pleading is sufficient to challenge all the hearing examiner's findings and, furthermore, the hearing examiner made only "circumscribed findings based on other legal criteria, not those listed in RMC 4-2-120C(15)." Appellant's Reply Br. at 35. Wal-Mart contends that failure to assign error to a hearing examiner's findings of fact makes them verities on appeal.

In *City of Medina*, we reviewed a hearing examiner's decision granting T-Mobile's request for a special use permit and three variances. *City of Medina*, 123 Wn.App. at 22. We concluded that "[Medina] does not appear to challenge any of the hearing examiner's findings in this case, so they are verities on appeal." *City of Medina*, 123 Wn.App. at 29. Similarly, in *United Development Corp. v. City of Mill Creek*, 106 Wn.App. 681, 684, 26 P.3d 943 (2001), we reviewed the city council's imposition of mitigation fees and other conditions on a subdivision. We concluded that "because [United Development Corporation] assigns no error to the findings of the City Council, they are verities on appeal." *United Dev.*, 106 Wn.App. at 688. See also *Stuewe v. Dep't of Revenue*, 98 Wn.App. 947, 950, 991 P.2d 634 (2000) (administrative finding of fact not assigned error is verity on appeal); *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 30, 891 P.2d 29 (1995) (same).

\*6 This case is similar to *City of Medina* and *United Development Corp.* The hearing examiner made numerous findings of fact based on the administrative record before him. RNHG assigns error "to the King County Superior Court's Final Order and Judgment issued on February 22, 2011." Appellant's Br. at 2. RNHG assigns no error to the hearing examiner's findings and cites no authority for its argument that LUPA petitioners challenge all of the hearing examiner's findings when they petition via simple notice pleading. See *First Am. Title Ins. Co. v. Liberty Capital Starpoint Equity for Fund, LLC*, 161 Wn.App. 474, 486, 254 P.3d 835 (2011) (declining to consider an inadequately briefed argument). The hearing examiner's findings are verities on appeal. Substantial evidence supports the findings as discussed below.

*Merits of Hearing Examiner's Decision*

RNHG argues that the hearing examiner's decision should be overturned because (1) Wal-Mart's proposal violates the City's design regulations applicable to district D under RMC 4-3-100 and (2) the proposal is an illegal expansion of a nonconforming use under RMC 4-10-050. We address the design regulations issue first because it affects both arguments.

*Design Regulations* FN9

FN9. As discussed above, we apply the amended design regulations in effect when the hearing examiner made his decision.

RMC 4-3-100's design regulations apply to development within certain designated design districts, including design district D where Wal-Mart is located. RMC 4-3-100(B)(1)(b), (3). The design regulations list elements that are required for development in the applicable design districts. Each element includes an intent statement, standards, and guidelines. RMC 4-3-100(A)(2). The standards "specify a prescriptive manner in which the requirement can be met," while the guidelines and intent statement "provide direction for those who seek to meet the required element in a manner that is different from the standards." RMC 4-3-100(A)(2). The design regulations mandate that the hearing examiner

shall have the authority to approve, approve with conditions, or deny proposals based upon the provisions of the design regulations. In rendering a decision, the [hearing examiner] will consider

proposals on the basis of individual merit, will consider the overall intent of the minimum standards and guidelines, and encourage creative design alternatives in order to achieve the purposes of the design regulations.

RMC 4-3-100(D)(2). If the examiner determines "that the proposed manner of meeting the design requirement through the guidelines and intent is sufficient, the applicant shall not be required to demonstrate sufficiency to the standard associated with the guideline that has been approved." FN10 RMC 4-3-100(A)(2)(b). "Where there are conflicts between the design regulations of this Section and other sections of the **Renton** Municipal Code, the regulations of this Section shall prevail." RMC 4-3-100(B)(2).

FN10. This provision does not appear in the former RMC. RNHG argues that the hearing examiner erred when he cited this provision in his decision on reconsideration. We addressed that argument above.

RNHG first argues that the standards set forth in the design regulations are mandatory and the hearing examiner erred in permitting Wal-Mart to meet the intent and guidelines rather than the specific standards. For this proposition, it cites to the former RMC provisions, which provided that the minimum standards "must be met." Former RMC 4-3-100(A)(8). As discussed above, the RMC was amended in March 2010 before the hearing examiner made his decision. The amendments removed the "must be met" language. As quoted above, the amended version of the RMC applicable at the time the hearing examiner decided this case did not require an applicant "to demonstrate sufficiency to the standard associated with the guideline that has been approved" as long as the applicant satisfied the intent and guidelines associated with the design requirement. RMC 4-3-100(A)(2)(b). "It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement." "Citizens for a Safe Neighborhood v. City of Seattle, 67 Wn.App. 436, 440, 836 P.2d 235 (1992) (quoting Mall, Inc. v. Seattle, 108 Wn.2d 369, 377, 739 P.2d 668 (1987)); see also Gen. Motors Corp. v. City of Seattle, 107 Wn.App. 42, 57, 25 P.3d 1022 (2001). Our Supreme Court has explained the reasons for this rule of deference:

\*7 "The primary foundation and rationale for this rule is that considerable judicial deference should be accorded to the special expertise of administrative agencies. Such expertise is often a valuable aid in interpreting and applying an ambiguous statute in harmony with the policies and goals the legislature sought to achieve by its enactment. At times, administrative interpretation of a statute may approach 'lawmaking,' but we have heretofore recognized that it is an appropriate function for administrative agencies to 'fill in the gaps' where necessary to the effectuation of a general statutory scheme. It is likewise valid for an administrative agency to 'fill in the gaps' via statutory construction—as long as the agency does not purport to 'amend' the statute."

Mall, 108 Wn.2d at 378 (quoting Hama Hama Co. v. Shorelines Hearings Bd., 85 Wn.2d 441, 448, 536 P.2d 157 (1975)) (internal citations omitted). Given the hearing examiner's authority to "consider proposals on the basis of individual merit," "consider the overall intent of the minimum standards and guidelines," and "encourage creative design alternatives," we decline to disturb the hearing examiner's interpretation of the RMC. RMC 4-3-100(D)(2). The hearing examiner did not err in considering whether Wal-Mart met the intent and guidelines associated with the design regulations despite not meeting the applicable standards. The examiner concluded on reconsideration that the RMC 4-3-100(A) and (D) provisions cited above "allow sufficient latitude to permit the proposed expansion as conditioned in the decision." RNHG fails to show that "[t]he land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." RCW 36.70C.130(1)(b).

RNHG next argues that the Wal-Mart proposal violates several design regulation standards. Specifically, RNHG contends that the proposal fails to conform to standards governing parking areas, tree planting, and building architectural design. FN11 See Appellant's Opening Br. at 25-27. To the extent RNHG contends these standards are mandatory and the hearing examiner erred in concluding

otherwise, our discussion above resolves this contention. To the extent RNHG contends that insufficient evidence supports the hearing examiner's findings on these matters,<sup>FN12</sup> the findings are verities on appeal as discussed above. Even if we review the findings—viewing the facts and inferences most favorably to the City and Wal-Mart as the prevailing parties below—substantial evidence supports them under RCW 36.70C.130(1)(c) and the findings support the hearing examiner's conclusions. The hearing examiner heard testimony at the public hearing regarding compliance and deviations necessitated by the site layout and existing structure. Various meeting attendees testified that the proposal would meet the design regulations' intent and guidelines even if certain standards were not met. City staff prepared a detailed report and recommended conditions to bring the proposal further in line with the intent and guidelines. The hearing examiner also considered public comment letters describing how the Wal-Mart expansion would improve the surrounding area and create jobs and advancement opportunities for employees. RNHG fails to demonstrate that "[t]he land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court" under RCW 36.70C.130(1)(c).

FN11. RNHG does not raise or brief any other specific objections to the proposal's compliance with the design regulations.

FN12. RNHG does not specifically make an "insufficiency of the evidence" argument and thus we need not consider it on appeal. See First Am., 161 Wn.App. at 486 (declining to consider an inadequately briefed argument). Nevertheless, we address this prong of RCW 36.70C.130(1) for completeness.

\*8 Likewise, RNHG fails to satisfy its burden under RCW 36.70C.130(1)(d) to demonstrate clear error in the hearing examiner's application of the design regulations to Wal-Mart's proposal. As discussed above, we defer to the hearing examiner's conclusion that the design regulations were not mandatory and that in the event a proposal fails to comply with standards, an applicant may demonstrate compliance with the intent and guidelines behind a particular regulation. Relevant to RNHG's challenges, RMC 4-3-100's design regulation intent statements include the intent to "maintain active pedestrian environments along streets by placing parking lots primarily in back of buildings;" "provide safe and attractive pedestrian connections to buildings;" and "encourage building design that is unique and urban in character, comfortable on a human scale, and uses appropriate building materials that are suitable for the Pacific Northwest climate and to discourage franchise retail architecture." RMC 4-3-100(E). The hearing examiner specifically addressed the noncompliance issue. He found that the site layout and existing conditions justified deviation from some standards given that the intent was met, and he imposed conditions to bring Wal-Mart further into compliance.<sup>FN13</sup> Given the design elements' flexibility, the hearing examiner's discretion in applying them, and the examiner's specific findings—unchallenged by RNHG and supported by substantial evidence in the record—RNHG fails to demonstrate any basis for reversing the examiner's decision for "clear error"—which is appropriate only if we are "left with the definite and firm conviction that a mistake has been committed." Phoenix Dev., 171 Wn.2d at 829.

FN13. Among the hearing examiner's findings and conclusions are: "the applicant has met the intent to reduce the visual impacts of the parking lot with the use of landscaping"; "the applicant proposes changes to its front or eastern façade to provide more visual interest"; "the applicant has gone beyond code requirements to provide additional interior landscaping and perimeter landscaping to shield and buffer the parking lot"; and "pedestrian pathways and amenities near the front of the store have been enhanced." The hearing examiner's conditions required Wal-Mart to comply with guidelines regarding lighting, building façade, landscaping, and other areas.

#### *Illegal Expansion of Nonconforming Structure*

RNHG argues that the hearing examiner's decision requires reversal because Wal-Mart proposed

an illegal enlargement of a nonconforming structure under RMC 4-10-050. Specifically, RNHG argues Wal-Mart's proposal (1) violates RMC 4-2-120(A)'s maximum front yard setback of 15 feet and (2) violates the City's design regulations. The respondents argue that the RMC allows the City to waive the 15-foot maximum setback requirement. The parties agree that the existing Wal-Mart store is "nonconforming" within the meaning of RMC 4-10-050.

RMC 4-10-050(A)(4) provides that nonconforming structures "shall not be enlarged unless the enlargement is conforming or it is consistent with the provisions of a rebuild approval permit issued for it." RMC 4-2-120(A) imposes a 15-foot maximum front yard setback requirement in the commercial arterial zone. Due to a large parking lot in front of the store, the existing Wal-Mart store's front entrance is approximately 555 feet from the relevant access roads (Hardy Avenue SW and Rainier Avenue S). To comply with RMC 4-2-120(A)'s 15-foot maximum setback requirement, Wal-Mart's expansion would need to extend approximately 540 feet across its existing parking area. The hearing examiner found:

**\*9** The [Commercial Arterial] Zone requires a maximum front yard setback of 15 feet in order to locate structures closer to the street and reduce the visual impact of parking along thoroughfares. The proposed expansion would not comply with this requirement providing a setback of approximately 555 feet from Hard[y]-Rainier. Staff found that since the expansion encompasses a small portion of the proposed existing complex it does not trigger a need to conform to the newer, current standards.

The hearing examiner concluded:

The existing use, a large "big box" establishment does not meet current code requirements for the setback along its frontage street, the Hard[y]-Rainier complex. Only an incredibly large expansion or complete rebuild could move the front of the store to the street and parking to the rear. The proposed approximately 16,000 square foot expansion cannot be expected to accomplish the maximum front yard setback of 15 feet. As a practical matter the tradeoff is allowing a reasonably well-designed expansion and revitalized store or probably permitting no change weighs in favor of the excessive setback....

.... The extensive setback, while non-conforming as to the Zoning Code, actually helps the transition between a rather large big box store and its neighboring uses....

RNHG first argues that because (1) a portion of the hearing testimony referred to RMC provisions for "alterations" rather than "enlargements," and (2) "[t]here is no reference to or acknowledgment of RMC 4-10-050 by the Examiner in his conclusion," the hearing examiner and City staff misinterpreted the RMC's provisions regarding enlargement of nonconforming structures. Appellant's Opening Br. at 15-16. The hearing examiner's decision shows that while the hearing examiner did not explicitly cite RMC 4-10-050, he considered this provision. The hearing examiner concluded that the existing store was nonconforming and that given the existing layout and site constraints, the expansion could not "be expected to accomplish the maximum front yard setback of 15 feet." The hearing examiner thus considered RMC 4-10-050(A)(4)'s requirement that nonconforming structures "shall not be enlarged unless the enlargement is conforming." Any reference to "alterations" rather than expansions in the hearing testimony is harmless given the hearing examiner's final decision, which considered Wal-Mart's proposal under the proper "expansion" analysis.

RNHG next argues that the hearing examiner erred in concluding that the City's design regulations contained in RMC 4-3-100 supersede RMC provisions that prohibit expansion of nonconforming structures. The respondents contend that the expansion complies with the design regulations, which take precedence over any conflicting zoning requirements—including the 15-foot maximum setback.

In response to RNHG's request for reconsideration, the hearing examiner explained the relationship between RMC 4-3-100's design regulations and the other zoning provisions in the RMC:

**\*10** The Design District Regulations are 'overlay' provisions [that] govern properties within their boundaries regardless of the underlying zoning and other zoning provisions. The overlay guidelines

provide that projects be reviewed with an eye toward flexibility to forward the main thrust of the guidelines—to create better designed and integrated projects. The guidelines allow different or creative ways to achieve those principles.

Further, the hearing examiner emphasized that (1) the design regulations' intent statements and guidelines " 'provide direction for those who seek to meet the required element in a manner that is different from the standards ' " and (2) the reviewing official should " 'encourage creative design alternatives in order to achieve the purposes of the design regulations.' " CP at 78 (quoting RMC 4-3-100(A)(2), (A)(2)(b)).

The hearing examiner clarified for RNHG that the RMC 4-3-100's design regulations apply to " '[ a] iterations, enlargements, and/or restorations of nonconforming structures pursuant to RMC 4-10-050 ' " as well as to " '[b]ig box retail' " such as Wal-Mart. CP at 78 (quoting RMC 4-3-100(B)(1)(a)(v) and (b)). Thus, "not only is the redevelopment of non-conforming uses permitted under these [design] regulations but they, in the language of the code, 'shall be required to comply with the provisions of [the design regulations].' " CP at 78-79 (quoting RMC 4-3-100(B)(1)(a)).

As discussed above, "[w]hen construing an ordinance, a 'reviewing court gives considerable deference to the construction of the challenged ordinance by those officials charged with its enforcement.' " Phoenix Dev., 171 Wn.2d at 830 (quoting Ford Motor Co. v. City of Seattle, 160 Wn.2d 32, 42, 156 P.3d 185 (2007)). At issue here is the proper interpretation of the relationship between two RMC provisions: RMC 4-10-050(A) (nonconforming uses) and RMC 4-3-100 (design regulations). RMC 4-3-100(B)(1)(b)(ii) states that all big box retail development in the Commercial Arterial zone must comply with the design regulations. And as discussed above, "[w]here there are conflicts between the design regulations of [RMC 4-3-100] and other sections of the **Renton** Municipal Code, the [design regulations] shall prevail. RMC 4-3-100(B)(2).

The hearing examiner interpreted the RMC to permit properties within the design regulation districts to be developed "in accordance with the guidelines rather than the more general regulations governing properties outside of a District governed by overlay regulations." Thus, Wal-Mart's proposal need only comply with the design regulations, not RMC 4-10-050(A)'s nonconforming use provisions. Assuming a conflict existed between RMC 4-3-100's design regulations and RMC 4-10-050(A)'s provisions governing nonconforming uses, this is a reasonable interpretation given the conflicts language in RMC 4-3-100(B)(2). Because we defer to the City's determination of what the RMC requires, we conclude that the hearing examiner properly interpreted the RMC to allow Wal-Mart—in the event the two RMC provisions at issue conflict—to comply with the design regulations rather than the nonconforming use provisions.

**\*11** We next consider whether a conflict exists. RNHG argues that the 15-foot setback requirement and the design regulations do not conflict and therefore the design regulations do not supersede the 15-foot setback. The respondents argue that the 15-foot setback conflicts with the design regulations as applied by the hearing examiner.

A conflict exists when it is "impossible to comply" with two separate directives. See Magnolia Neighborhood Planning Council v. City of Seattle, 155 Wn.App. 305, 318, 230 P.3d 190 (2010) (addressing conflicts standards in context of federal preemption); Lawson v. City of Pasco, 144 Wn.App. 203, 213-14, 181 P.3d 896 (2008) (applying the federal "impossible to comply" conflict test in deciding whether a state statute conflicted with a city ordinance).

In Baker v. Snohomish County Department of Planning & Community Development, 68 Wn.App. 581, 841 P.2d 1321 (1992), we addressed a claim of conflict between the permitting requirements of a state regulatory agency and a county. We found it "impossible to demonstrate in the abstract that the provisions of [a state regulatory agency permit] and the provisions of the [county] land-use permit are in conflict" when both the state regulatory agency and the county have a large measure of discretion in fixing the terms of a permit. Baker, 68 Wn.App. at 591. "Where any conflict is hypothetical and dependent upon the precise manner in which two discretionary permits were crafted, it is inappropriate to find preemption by implication. It is soon enough to find preemption when a conflict arises." Baker, 68 Wn.App. at 591. Thus, we have acknowledged that agencies may need to

exercise their discretion before we can determine whether a conflict exists.

As discussed above, the design regulations confer considerable discretion on the hearing examiner. Applicable RMC 4-3-100 design regulation intent statements regarding building placement and design include the intent to "organize buildings for pedestrian use;" "ensure an appropriate transition between buildings, parking areas, and other land uses;" "make building entrances convenient to locate and easy to access;" "ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district;" "maintain active pedestrian environments along streets by placing parking lots primarily in back of buildings;" and "provide safe and attractive pedestrian connections to buildings." RMC 4-3-100(E)(1)-(3).

Here the hearing examiner considered the required design elements and determined that a larger setback was appropriate because it allowed for better design. He concluded that "only an incredibly large expansion or complete rebuild" would meet the 15-foot setback requirement and that Wal-Mart's proposed 16,000 square foot expansion "cannot be expected to close the distance to the street to 15 feet." CP 1001, 1002. He determined, "The extensive setback ... helps the transition between a rather large big box store and its neighboring uses." He also determined that "[t]aking advantage of the building's existing placement ... help[s] achieve a reasonable proposal." Other relevant conclusions include that "[Wal-Mart] has gone beyond code requirements to provide additional interior landscaping and perimeter landscaping to shield and buffer the parking lot;" "[p]edestrian links through the site and to the surrounding sidewalks help mitigate some of the impacts;" and "pedestrian pathways and amenities near the front of the store have been enhanced." The hearing examiner characterized his decision as a "tradeoff ... allowing a reasonably well-designed expansion and revitalized store or probably permitting no change weighs in favor of the excessive setback." Thus, the hearing examiner exercised his discretion in finding that Wal-Mart's proposal, while not compliant with several design regulation standards, met the intent and guidelines of the design regulations. Upon exercising this discretion, the 15-foot setback was impossible to achieve. We conclude that a conflict exists between RMC 4-3-100 design regulations and RMC provisions that prohibit expansion of nonconforming uses. The hearing examiner properly applied RMC 4-3-100 rather than RMC 4-10-050.

\*12 RNHG also argues that in addition to violating the 15-foot setback requirement, Wal-Mart's proposal violates the design regulations pertaining to building and parking structures. This claim fails for the reasons discussed above.

#### *Attorney Fees*

Wal-Mart and the City seek attorney fees on appeal as the prevailing parties under RCW 4.84.370. The prevailing party on appeal of a land use decision is entitled to its attorney fees if that party's decision also prevailed before the administrative agency and in the superior court. RCW 4.84.370(1); Friends of Cedar Park 156 Wn.App. at 654-55. As the prevailing parties, the City and Wal-Mart are entitled to an award of reasonable attorney fees on appeal subject to compliance with RAP 18.1.

#### *CONCLUSION*

RNHG fails to demonstrate that the hearing examiner misconstrued the city code or misapplied the law to the facts. Because RNHG has not met its burden of showing it is entitled to relief from the hearing examiner's decision under the LUPA, we affirm.

WE CONCUR: APPELWICK and GROSSE, JJ.

Wash.App. Div. 1, 2012.

**Renton** Neighbors for Healthy Growth v. PACLAND  
Not Reported in P.3d, 168 Wash.App. 1009, 2012 WL 1662472 (Wash.App. Div. 1)

Briefs and Other Related Documents ([Back to top](#))

- [2011 WL 6032542](#) (Appellate Brief) Response Brief of Intervenor-Respondent Wal-Mart Stores, Inc.

(Aug. 11, 2011)  [Original Image of this Document with Appendix \(PDF\)](#)

- [2011 WL 6032543 \(Appellate Brief\) Rentpon's Brief in Opposition \(Aug. 10, 2011\)](#)  [Original Image of this Document with Appendix \(PDF\)](#)
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Judges

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- **Grosse, Hon. C. Kenneth**

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- **Lau, Hon. Linda**

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# King County Countywide Planning Policies

Updated December 2010

This document includes all amendments approved and ratified through December, 2010. If you have questions about the Countywide Planning Policies document, please contact Paul Reitenbach of the Department of Development and Environmental Services at 206.296.6705 or email him at [paul.reitenbach@kingcounty.gov](mailto:paul.reitenbach@kingcounty.gov).

#### 4. Cities in the Rural Area

The cities and unincorporated towns in the Rural Areas are a significant part of King County's diversity and heritage. Cities in this category include: Black Diamond, Carnation, Duvall, Enumclaw, North Bend, Snoqualmie and Skykomish. They have an important role as local trade and community centers. These cities and towns are the appropriate providers of local rural services for the community. They also contribute to the variety of development patterns and housing choices within the County. As municipalities, the cities are to provide urban services and be located within designated Urban Growth Areas. The urban services, residential densities and mix of land uses may differ from those of the large, generally western Urban Growth Area.

LU-38 In recognition that cities in the Rural Area are generally not contiguous to the Countywide Urban Growth Area, and to protect and enhance the options cities in Rural Areas provide, these cities shall be located within Urban Growth Areas. These Urban Growth Areas generally will be islands separate from the larger Urban Growth Area located in the western portion of the County. Each city in the Rural Area and King County and the Growth Management Planning Council shall work cooperatively to establish an Urban Growth Area for that city. The Urban Growth Area for cities in the Rural Area shall:

- a. Include all lands within existing cities in the Rural Area;
- b. Be sufficiently free of environmental constraints to be able to support rural city growth without major environmental impacts;
- c. Be contiguous to city limits;
- d. Have boundaries based on natural boundaries, such as watersheds, topographical features, and the edge of areas already characterized by urban development;
- e. Be maintained in large lots at densities of one home per five acres or less with mandatory clustering provisions until such time as the city annexes the area;
- f. Be implemented through interlocal agreements among King County, the cities and special purpose districts, as appropriate, to ensure that annexation is phased, nearby open space is protected and development within the Urban Growth Area is compatible with surrounding Rural and Resource Areas; and
- g. Not include designated Forest or Agricultural Production District lands unless the conservation of those lands and continued resource-based use, or other compatible use, is assured.

#### D. Urban and Manufacturing/Industrial Centers

*Urban Centers are envisioned as areas of concentrated employment and housing, with direct service by high-capacity transit, and a wide range of other land uses such as retail, recreational, public facilities, parks and open space.*

*Urban Centers are designed to 1) strengthen existing communities, 2) promote housing opportunities close to employment, 3) support development of an extensive transportation system to reduce dependency on automobiles, 4) consume less land with urban development, 5) maximize the benefit of public investment in infrastructure and services, 6) reduce costs of and time required for permitting, and 7) evaluate and mitigate environmental impacts.*

*Manufacturing/Industrial Employment Centers are key components of the regional economy. These areas are characterized by a significant amount of manufacturing, industrial, and advanced technology employment. They differ from other employment areas, such as business/office parks (see FW-16 and LU-70-74), in that a land base and the segregation of major non-manufacturing uses are essential elements of their operation.*

FW-14 Within the Urban Growth Area, a limited number of Urban Centers which meet specific criteria established in the Countywide Planning Policies shall be locally designated. Urban Centers shall be characterized by all of the following:

- a. Clearly defined geographic boundaries;
- b. Intensity/density of land uses sufficient to support effective rapid transit;
- c. Pedestrian emphasis within the Center;
- d. Emphasis on superior urban design which reflects the local community;
- e. Limitations on single-occupancy vehicle usage during peak hours or commute purposes;
- f. A broad array of land uses and choices within those uses for employees and residents;
- g. Sufficient public open spaces and recreational opportunities; and
- h. Uses which provide both daytime and nighttime activities in the Center.

FW-15 Within the Urban Growth Area, the Countywide Planning Policies shall assure the creation of a number of locally determined Manufacturing/Industrial Centers which meet specific criteria. The Manufacturing/Industrial Centers shall be characterized by the following:

- a. Clearly defined geographic boundaries;
- b. Intensity/density of land uses sufficient to support manufacturing, industrial and advanced technology uses;
- c. Reasonable access to the regional highway, rail, air and/or waterway system for the movement of goods;
- d. Provisions to discourage large office and retail development; and
- e. Fast-track project permitting.

FW-16 Urban and Manufacturing/Industrial Centers shall be complemented by the land use pattern outside the Centers but within the Urban Area. This area shall include: urban residential neighborhoods, Activity Areas, business/office parks, and an urban open space network. Within these areas, future development shall be limited in scale and intensity to support the Countywide land use and regional transportation plan.

## **1. Urban Centers Designation Process**

LU-39 The location and number of Urban Centers in King County were determined through the joint local and Countywide adoption process, based on the following steps:

- a. The Countywide Planning Policies include specific criteria for Urban Centers;
- b. Jurisdictions electing to contain an Urban Center provided the Growth Management Planning Council with a statement of commitment describing the city's intent and commitment to meet the Centers' criteria defined in these Policies

and a timetable for the required Centers Programmatic Environmental Impact Statement or identification of existing environmental documentation to be used; and

- c. The Growth Management Planning Council reviewed the Centers nominated by local jurisdictions consistent with policy FW-1, and the following criteria:
  1. The Center's location in the region and its potential for promoting a Countywide system of Urban Centers;
  2. The total number of Centers in the County that can be realized over the next 20 years, based on 20 years projected growth;
  3. The type and level of commitments that each jurisdiction has identified for achieving Center goals; and
  4. Review of other jurisdictional plans to ensure that growth focused to Centers is assured.
  
- d. The Growth Management Planning Council confirmed the following Urban Centers:
  - Bellevue CBD
  - Downtown Auburn
  - Downtown Burien
  - Federal Way CBD
  - Kent CBD
  - Redmond CBD
  - Redmond Overlake
  - Renton CBD
  - Seattle CDD
  - Seattle Center
  - First Hill/Capitol Hill
  - University District
  - Northgate
  - SeaTac CBD
  - South Lake Union
  - Tukwila CBD
  - Totem Lake

## 2. Urban Centers Criteria

Urban Centers vary substantially in the number of households and jobs they contain today. The intent of the Countywide Planning Policies is to encourage the growth of each Urban Center as a unique, vibrant community that is an attractive place to live and work, that will support efficient public services including transit, and that responds to local needs and markets for jobs and housing.

Two approaches are used to set guidelines and track the growth of Urban Centers. First, the Countywide Planning Policies establish levels of households and jobs needed to achieve the benefits of an Urban Center. Some Urban Centers will reach these levels over the next 20 years, while for others the criteria set a path for growth over a longer term and provide capacity to accommodate growth beyond the 20-year horizon. Second, jurisdictions establish 20-year household and employment growth target ranges for each Urban Center. The target ranges reflect the diversity of the Centers, allowing communities to envision changes over the next 20 years and plan for needed services. The target ranges set a policy for the level of growth

envisioned for each Center that not only considers land capacity but also the timing and funding of infrastructure. Reaching the target ranges will require planning, public investment, and incentives for private investments. Over time the Centers will move toward the development pattern envisioned in the Countywide Planning Policies.

Within the County, Urban Centers are expected to account for up to one-half of employment growth and one-quarter of household growth over the next 20 years. Additional capacity for household and employment growth is provided in the Urban Growth Areas outside of designated Urban Centers to ensure that, Countywide, 20-year growth projections will be accommodated.

- LU-40 Each jurisdiction which has designated an Urban Center shall adopt in its comprehensive plan a definition of the Urban Center which specifies the exact geographic boundaries of the Center. All Centers shall be up to one and a half square miles of land. Infrastructure and services shall be planned and financed consistent with the expected rate of growth. For the purposes of achieving a long-range development pattern that will provide a successful mix of uses and densities that will efficiently support high-capacity transit, each Center shall have planned land uses to accommodate:
- a. A minimum of 15,000 jobs within one-half mile of a transit center;
  - b. At a minimum, an average of 50 employees per gross acre; and
  - c. At a minimum, an average 15 households per gross acre.
- LU-41 In order to be designated as Urban Centers, jurisdictions shall demonstrate both that an adequate supply of drinking water is available to serve projected growth within the Urban Center and that the jurisdiction is capable of concurrent service to new development.
- LU-42 Jurisdictions which contain Urban Centers, in conjunction with METRO, shall identify transit station areas and rights-of-way in their comprehensive plan. Station areas shall be sited so that all portions of the Urban Center are within walking distance (one-half mile) of a station.
- LU-43 In order to reserve rights-of-way and potential station areas for high-capacity transit or transit hubs in the Urban Centers, jurisdictions shall:
- a. Upon adoption of specific high-capacity transit alignments by METRO, adopt policies to avoid development which would restrict establishment of the high-capacity transit system;
  - b. Preserve rights-of-way controlled by the jurisdiction which are identified for potential transit use; and
  - c. Provide METRO an option to acquire property owned by the jurisdiction.
- LU-44 To encourage transit use, jurisdictions should establish mechanisms to limit the use of single-occupancy vehicles for commuting purposes. Such mechanisms could include charging for long-term single-occupancy vehicle parking and/or limiting the number of off-street parking spaces for each Urban Center; establishing minimum and maximum parking requirements that limit the use of the single-occupant vehicle; and

~~\*ENCOURAGE. NOT REQUIRE~~

developing coordinated plans that incorporate Commuter Trip Reduction guidelines. All plans for Urban Centers shall encourage bicycle travel and pedestrian movement.

LU-45 Jurisdictions' comprehensive plans for Urban Centers shall demonstrate compliance with the Urban Centers criteria. In order to promote urban growth within Centers, the Urban Center plan shall establish strategies which:

- a. Support pedestrian mobility, bicycle use and transit use;
- b. Achieve a target housing density and mix of use;
- c. Provide a wide range of capital improvement projects, such as street improvements, schools, parks and open space, public art and community facilities;
- d. Emphasize superior urban design;
- e. Emphasize historic preservation and adaptive reuse of historic places;
- f. Include other local characteristics necessary to achieve a vital Urban Center; and
- g. Include facilities to meet human service needs.

LU-46 The system of Urban Centers shall form the land use foundation for a regional high-capacity transit system. Urban Centers should receive very high priority for the location of high-capacity transit stations and/or transit centers. (See also LU-59)

### 3. Incentives for Urban Centers

*In order to help create Urban Centers, incentives to jurisdictions to establish Urban Centers, and to the community to build in Urban Centers, should be established.*

*The provision of high-capacity transit (HCT) is one such incentive. Others include funding, and streamlined permitting.*

LU-47 Countywide financing strategies shall be developed by the Growth Management Planning Council or its successor, which:

- a. Identify regional funding sources; and
- b. Set priorities and allocate funds for urban facilities and services including social and human services, and subarea planning efforts, in Urban Centers.

LU-48 Each jurisdiction electing to contain an Urban Center shall prepare a Programmatic Environmental Impact Statement (PEIS) for each proposed Center. The PEIS shall be prepared in a comprehensive manner and shall address probable significant adverse environmental impacts from and reasonable alternatives to the proposal. These may include, but are not necessarily limited to subjects of areawide concern such as cumulative impacts, housing, schools, public utilities, and transportation. Subsequent project-specific proposals shall not be required to perform duplicative environmental review of issues which have been adequately reviewed in the PEIS, but shall provide additional environmental review of other issues. These may include, but are not necessarily limited to the direct impacts of the specific proposal, substantial changes in the nature of the proposal or information regarding impacts which indicate probable significant adverse environmental impacts which were not adequately analyzed in the PEIS. Examples of project-specific direct impacts include local traffic impacts, site aesthetics, and other issues not addressed by the PEIS.

LU-49 In support of Centers, additional local action should include:

- a. Strategies for land assembly within the Center, if applicable;
- b. Infrastructure and service financing strategies and economic development strategies for the Centers;
- c. Establishing expected permit processing flow commitments consistent with the PEIS; and
- d. Establishing a streamlined and simplified administrative appeal process with fixed and certain timelines.

LU-50 Jurisdictions should consider additional incentives for development within Urban Centers such as:

*\* incentives, not Requirements*

- a. Setting goals for maximum permit review time and give priority to permits in Urban Centers;
- b. Policies to reduce or eliminate impact fees;
- c. Simplifying and streamlining of the administrative appeal processes;
- d. Eliminating project-specific requirements for parking and open space by providing those facilities for the Urban Center as a whole; and
- e. Establishing a bonus zoning program for the provision of urban amenities.

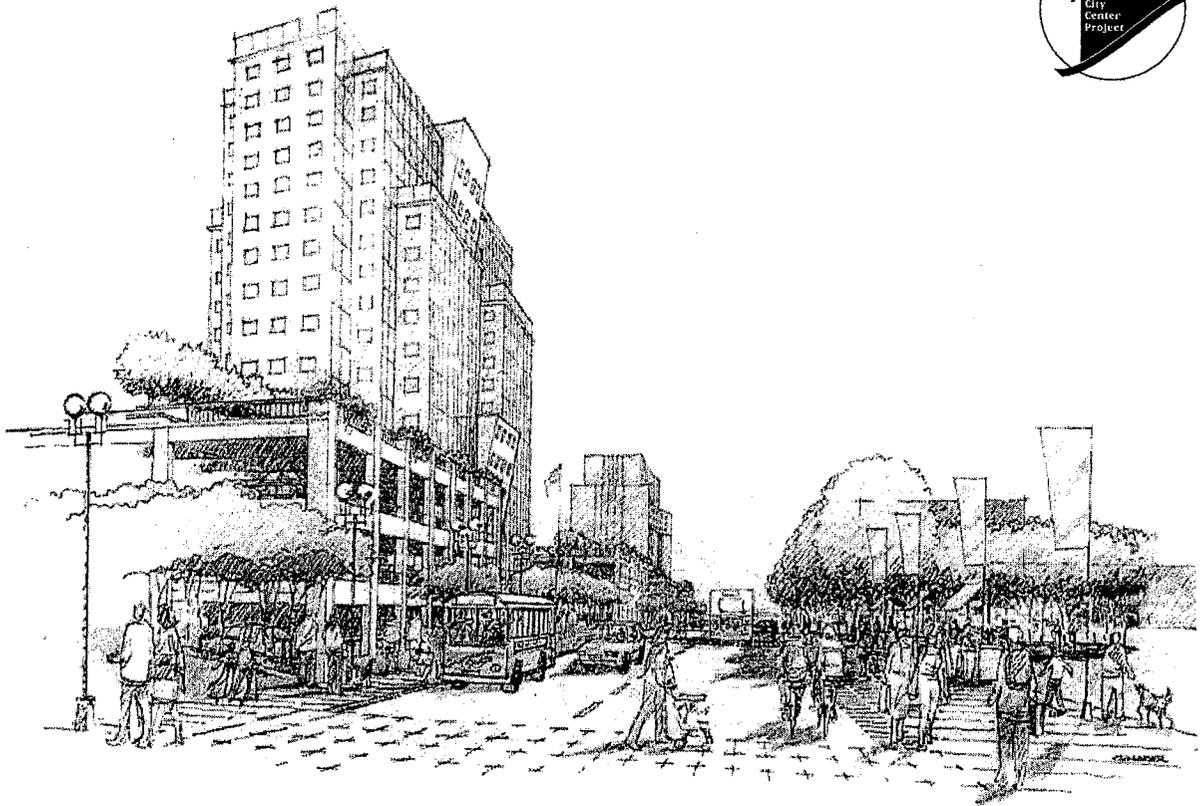
#### 4. Manufacturing/Industrial Center Designation Process

LU-51 The location and number of regional Manufacturing/Industrial Centers in King County were determined through the joint local and Countywide adoption process, based on the following steps:

- a. Countywide Planning Policies include specific criteria for Manufacturing/Industrial Centers;
- b. Jurisdictions electing to contain a Manufacturing/Industrial Center provided the Growth Management Planning Council with a statement specifying how the Center will meet the intent of the Countywide Policies, including plans to adopt criteria, incentives, and other commitments to implement Manufacturing/Industrial Centers;
- c. The Growth Management Planning Council reviewed the Manufacturing/Industrial Centers elected by local jurisdictions consistent with policy FW-1, and the following criteria:
  1. The Center's location in the region, especially relative to existing and proposed transportation facilities and its potential for promoting a Countywide system of Manufacturing/Industrial Centers;
  2. The total number of Centers that are needed in the County over the next 20-years based on 20 years projected need for manufacturing land to satisfy regional projections of demand for manufacturing land that assume a ten percent increase in manufacturing jobs over this period;
  3. The type and level of commitments that each jurisdiction has identified for achieving Manufacturing/Industrial Center goals;

City of Lynnwood  
**CITY CENTER  
SUB-AREA PLAN**

September, 2007



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# Foreword

*Lynnwood's future is bright with hope!*

*Our community is poised and positioned to become the premiere city north of Seattle over the next twenty years. At the heart of this renaissance is a new Lynnwood City Center.*

*This new creation is envisioned as a dynamic place to live, work and play while ensuring that the surrounding neighborhoods would be largely unaffected. It would cradle the opportunities and amenities of a central business district that includes pedestrian friendly streets in a park like environment. And much more...*

*You are holding a copy of the plan that outlines the transforming process that will turn the vision into reality. It is the product of over four years hard work by scores of men and women in our community. This cadre of civic leaders and local citizens has dared to anticipate the day when Lynnwood will be the city of choice by our children's children.*

*And now it's your turn. This is your invitation to join the journey.*

*So, read on...and enjoy.*



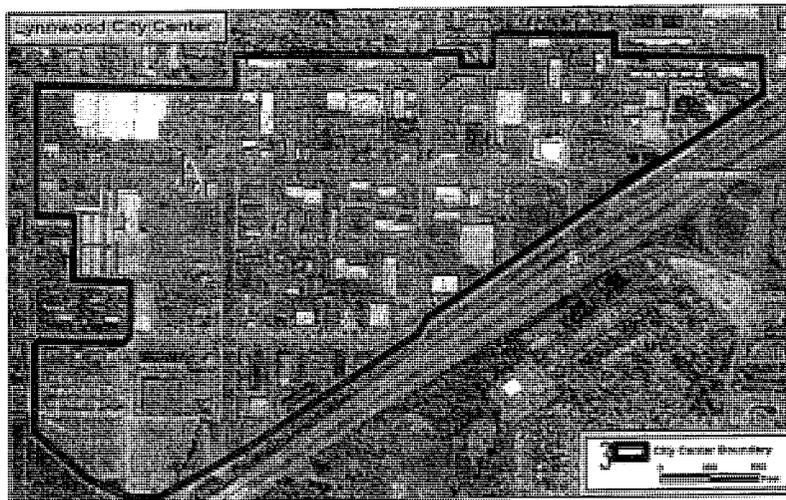
# I. General Framework

The Lynnwood City Center has extraordinary potentials as part of a dynamic regional market. Adjacent to two major freeways and surrounded by strong, stable residential neighborhoods, it contains numerous properties that have remained vacant or underdeveloped.

As one of the officially designated "urban centers" in the metropolitan area, it can attract major new investment providing jobs, retail shops and services, entertainment, public spaces, and cultural attractions that do not now exist in the area. It has potential for a considerable amount of new housing. The City Center can emerge over time as a lively, diverse and appealing place to live, work, shop and play.

To achieve this, the physical setting of the City Center will need to be altered to attract both new development and redevelopment. Additional traffic will warrant the widening of some streets and construction of new ones providing safe and appealing sidewalks. Upgrading the infrastructure and new public spaces and amenities will be needed. Finally, entirely new codes and standards are necessary.

Both public and private sectors will need to exercise leadership in directing resources to achieve the vision and address the challenges. The result will be a greatly enhanced tax base and new choices for Lynnwood residents, workers and visitors.



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3 December 2009

Project #: 7279

**TO: Lynn Miranda and Nora Gierloff**  
**FROM: Abe Farkas, Anne Fifield, and Susan Davis**  
**SUBJECT: TECHNICAL MEMORANDUM: TUKWILA URBAN CENTER  
IMPLEMENTATION ANALYSIS – FINAL**

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The City of Tukwila contracted with ECONorthwest (ECO) to evaluate the vision and development regulations (Books I and II) of the public review draft of the Southcenter Plan—the City's plan for their urban center. ECO evaluated the market for proposed redevelopment in the Tukwila Urban Center (TUC) and provided financial analysis to identify potential adjustments to the plan and development regulations to make redevelopment of the TUC more feasible in the short run, and to assure that the vision outlined in the draft plan is aligned with longer-run market realities.

This technical memorandum summarizes the research conducted by ECO. It has four sections:

- **Introduction and Background** provides an overview of the development vision for the draft Urban Center Plan and its purpose. It identifies the key issues of the development requirements that may negatively affect redevelopment. This section also includes an overview of the research methods used in this analysis.
- **Development Market Economics: The Long Run** describes the market and demographic forces that will influence the implementation of the TUC plan vision over the long term.
- **Development Market Economics: The Short Run** describes the results of ECO's pro forma analyses of four prototype developments to determine financial feasibility of the draft TUC development regulations in the short term.
- **Implications and Recommendations** summarizes the implications of the technical research and recommends strategies to support the implementation of the TUC plan.

Attached to this memorandum are two Appendices:

- **Focus Group Notes and Participants** provides detailed notes of focus group discussions and those who participated.
- **Details of Financial Pro Formas** provides the details of the technical analyses.

# 1 INTRODUCTION AND BACKGROUND

## 1.1 THE TUKWILA URBAN CENTER

The City's Comprehensive Plan identifies the Tukwila Urban Center (TUC) as one of King County's designated Urban Centers; as such, the plan's vision is consistent with the Countywide Planning Policies that require an average of 50 employees and 15 households per gross acre. The draft Plan describes a future development pattern that is more dense, pedestrian-oriented, and includes a broader mix of uses than is currently seen in the TUC. In February 2009, the City of Tukwila issued the public review draft of the Southcenter Plan (*the Plan*), which presents the community's vision for growth and change for the TUC. The draft Plan also includes development regulations specific to the TUC that require development forms designed to achieve the community's vision for the area.

Existing development patterns in the Plan Area are primarily single-story, auto-oriented, commercial development. The northern portion is dominated by a super-regional shopping mall surrounded by parking lots and rings of associated smaller scale, surface-parked commercial buildings. The southern portion is primarily a warehouse and distribution center, with some retail outlets and office buildings. Some "big box" retailers have located in the western and southern portions of the Plan Area.

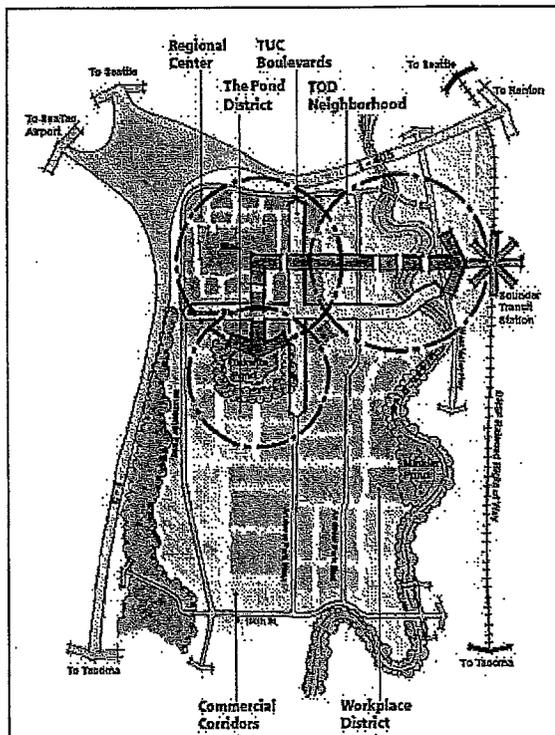
The community envisions growth in the northern part of the Plan Area taking on a more compact and differentiated form. Tukwila's new redevelopment strategies support the continued success of existing uses, with districts of more urban mixed-use development including residential, entertainment, restaurant, life-style retail, and office components. These districts are envisioned as active, mid-rise areas with pedestrian-oriented streets, connecting the expanding Westfield Southcenter Mall with the Sounder Commuter Rail/Amtrak Station, and including the area surrounding Tukwila Pond.

The draft Plan identified key characteristics envisioned for districts and corridors within the TUC, shown in Figure 1:

- **The Regional Center.** The area currently dominated by the Southcenter Mall will become denser and scaled for pedestrians. In the long-term, the draft Plan shows increased building height with offices, residences, or hotels on upper floors. Parking will continue to transition from surface lots to structured parking.
- **The Pond District.** The draft Plan calls upon new development to take advantage of the pond as a natural amenity, with new development oriented toward the pond, with active doors, windows, and public walkways facing the water.
- **The TOD Neighborhood.** The draft Plan calls for the area to intensify, with the taller buildings near the Transit Station and close to the Regional Center, and lower buildings along the river.

- **The Workplace District.** Much of the southern portion of the Plan Area has been and will continue to be devoted to warehousing and distribution uses. As in the other districts the draft Plan calls for a finer grid of new, smaller streets that interconnect existing large-scale blocks.
- **The Commercial Corridor District.** The draft Plan calls for the continuation of auto-oriented retail and services along Southcenter Parkway, including big box retail, super centers, and drive-up facilities.

**Figure 1. Envisioned district structure**



Source: Tukwila Urban Center draft Plan.

To achieve the desired forms across the TUC, the draft Plan proposes development regulations specific to the TUC. The proposed development code is a "form-based" code, which means it specifies allowed building form (e.g., height and setback). The code also has standards for use, scale, and form for the zones and corridors described above.

## 1.2 KEY ISSUES ADDRESSED IN THIS ANALYSIS

Several parties have expressed concerns that the draft TUC plan and the development regulations overreach market realities. Stakeholders have expressed concern that much of the draft TUC Plan is based on a market analysis conducted in 2002 that is now outdated. The stakeholders have indicated that the draft TUC Plan and development

code require types and densities of development that are not economically feasible in today's market.

The City extended an invitation with these stakeholders to participate in focus groups on the draft measures of the Plan. ECO conducted interviews and three focus groups with these stakeholders. The stakeholders identified some of the following key requirements of the development code as concerns:

- Height requirements. The development code requires a two-story (25 foot) minimum for structures (excluding anchor retail uses) in the Regional Center, the Pond District, and the TOD Neighborhood. For the short-term, stakeholders were concerned that the required building types may be more costly to build than current rents can support.
- Parking requirements. The code requires 6.0 spaces per 1,000 s.f. of restaurant space, 3.3 spaces for retail, 3.0 spaces for office, and 1.0 spaces per bedroom for each residential unit (with a maximum of 2.0 spaces per dwelling unit). The parking requirements are typical of suburban development. Providing minimum parking would likely require parking structures, increasing construction costs.
- Complexity of the Code. A few stakeholders felt that the proposed development code is complex. It includes code that regulates both form and use.
- Redevelopment and conformity to Code. Remodels or expensive tenant improvements could trigger requirements for conformity to the TUC Code. Stakeholders perceived that a relatively small change could force very difficult and costly improvements to the structure. Such a remodel could require a new building height minimum or bringing a building up to the street. A building owner may avoid making *any* improvement to a structure, in order to avoid improvements that are not economical at this time. The area could see disinvestment in existing structures.
- Fire code requirements for high-rises. The existing Tukwila Fire Code requires significant engineering for buildings over 40 feet tall. Those engineering requirements add significant costs—essentially making a mid-rise building have the same fire/life safety engineering requirements as a high-rise building. The stakeholders believe that these requirements make it unlikely that it would ever be cost-effective to build a mid-rise structure in the TUC. Many other jurisdictions in Washington and Oregon have adopted codes that enable mid-rise construction for buildings that are 65 feet which makes it possible to build five floors of residential or office over one story of retail. These buildings tend to be more economically viable in many markets and reinforce activated ground floor goals in these communities. This is a city-wide issue, though especially problematic to the TUC vision.
- The above issues have specific details that make them problematic but they all contribute to the same, broad concern voiced by stakeholders about the proposed TUC development code: The Code requires building types that are expensive.

The market in Tukwila does not currently generate rents from tenants high enough to make it financially feasible to build required structure types. Improvements that *are* financially feasible trigger additional improvements that add prohibitive costs. This is likely to discourage *any* improvement to existing structures, unnecessarily causing disinvestment in a successful retail center. Some voiced concerns that existing, successful retail tenants may choose to relocate to neighboring jurisdictions, causing the City to experience a decline in sales tax revenue.

Part of ECO's aim in this analysis is to explore these concerns and provide information to the City about how realistic they are, and about how changes to the Code and the Plan might help to mitigate the outcomes.<sup>1</sup>

### 1.3 METHODS USED IN THIS ANALYSIS

To respond to stakeholders' concerns, ECO relied on a variety of analytical methods for this analysis:

- **Review of existing documents and studies.** ECO reviewed the documents that supported the development of the draft TUC Plan, including the public review draft of the Tukwila Urban Center Plan, its Development Code and Implementation Strategy, and the 2002 market analysis .
- **Demographics and market trends.** ECO reviewed long-run economic, demographic, and development trends to provide a sense of the TUC's comparative advantage and risks.
- **Pro Forma analysis.** To answer the concern that the required development types are not feasible, ECO created four financial pro formas for prototype developments to illustrate how they might work. The pro formas answer questions about how realistic development forms are in the short term, given current financial markets and also more historic patterns.
- **Focus groups.** ECO conducted three focus groups and follow-up interviews with TUC stakeholders and other office, retail, residential and mixed-use developers

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<sup>1</sup> In addition, many of the stakeholders in the TUC have expressed concerns that the draft TUC Plan and development code require types and densities of development that are not economically feasible in today's market, and much of the draft TUC Plan is based on a market analysis conducted in 2002 that is now outdated. ECO agrees that the 2002 market analysis is not adequate now as a short-run analysis: the market has changed. However, given the uncertainty in the current market, it is not an effective use of City funds to do a new, detailed market analysis (like the one completed in 2002) at this time.

doing business in the region (but not in Tukwila) to determine specific concerns and identify potential solutions to problems.

## 2 DEVELOPMENT MARKET ECONOMICS: THE LONG-RUN

This section describes some of the market-based forces that will influence the implementation of the TUC Plan. It describes how broad trends in demographics, economic conditions, and development give Tukwila a competitive advantage or disadvantage for attracting the urban development form envisioned in the Plan.

### 2.1 FACTORS THAT FAVOR DEVELOPMENT

**Summary: Comparative advantages for development in Tukwila:**

Location and access  
Large marketshed and regional retail draw  
Regional employment center  
Potential waterfront amenity  
Large, unconfigured parcels

The TUC has a number of competitive advantages that will positively affect implementation of the proposed development plan.

The TUC's primary advantage is its location. It is centrally located between the major population centers of Seattle and Tacoma and has good transportation connections.

- It is about 20 minutes by car from downtown Seattle and about 25 minutes from Tacoma.
- It has good access to a variety of automobile transportation routes. The TUC is on the southeast corner of the I-5 and I-405 interchange.
- The temporary Amtrak Station will be replaced by the permanent Tukwila Sounder Commuter Rail/Amtrak Station, which is in the design phase with construction expected to begin 2010. It will be located on the eastern edge of the TUC.
- It is less than five miles from Sea-Tac, a major international airport.
- It is a 10-minute bus ride from the Light Rail stop on Tukwila International Blvd.

Because it has good access to large employment centers, it has access to a large market for both retailers and employers. In a market-shed that is roughly equal to four miles around the TUC, there are about 214,000 households.

Its good access and strong retail base, largely stemming from the location of the Southcenter Mall, makes the TUC a reasonable location for employment for many in the labor force. About 16,000 individuals commute daily to the TUC, and those workers come from all over the Puget Sound region. Table 1 shows the residential location of the individuals employed in the TUC boundary.

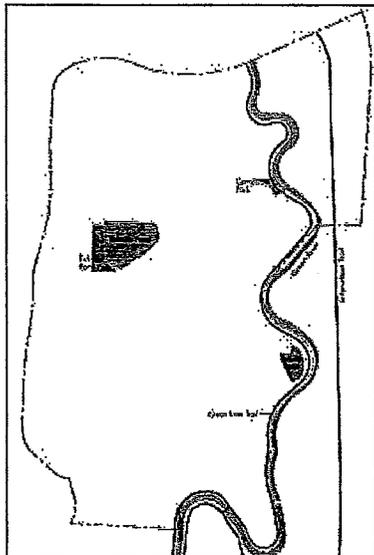
**Table 1. Residential location of TUC employees, 2006**

Location	Workers	Percent
Seattle	2,049	13%
Kent	1,033	6%
Renton	850	5%
Tacoma	696	4%
Federal Way	680	4%
Cascade-Fairwood	648	4%
Tukwila	334	2%
All Other Cities	10,072	62%
King County	10,993	67%
Pierce County	2,198	13%
Snohomish County	1,178	7%
All Other Counties	1,993	12%
<b>Total</b>	<b>16,362</b>	<b>100%</b>

Source: U.S. Census OnTheMap 2006.

The firms employing the largest number of people are major retailers, including Nordstrom, Macy's, Costco, J.C. Penny, and Red Dot Corporation (truck air conditioning equipment). Carlyle, Inc., another major employer, manufacturers and distributes wire, cable, and connector products.

**Figure 2. Waterfront amenities**

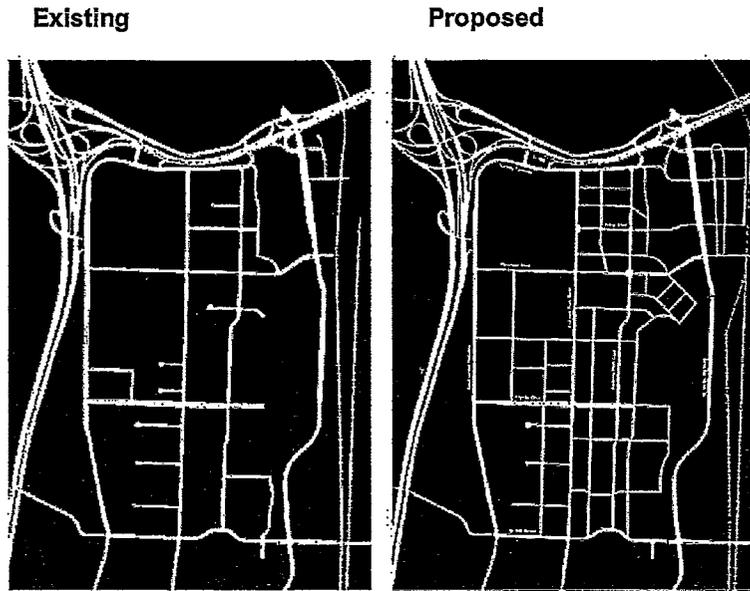


Source: Tukwila Urban Center draft Plan.

The TUC area has two significant water features: the Tukwila Pond and the Green River. Existing development has not used the features as an amenity, and they are an obvious opportunity for attractive and appealing development. Figure 2 shows the location of the water features.

Existing land ownership patterns in the TUC are an advantage for redevelopment. The parcels are large, meaning that redevelopment can take many forms. Future land division has flexible options. Figure 3 shows existing land development patterns and the proposed development pattern.

**Figure 3. Existing and proposed parcel division**



## 2.2 FACTORS THAT CONSTRAIN DEVELOPMENT

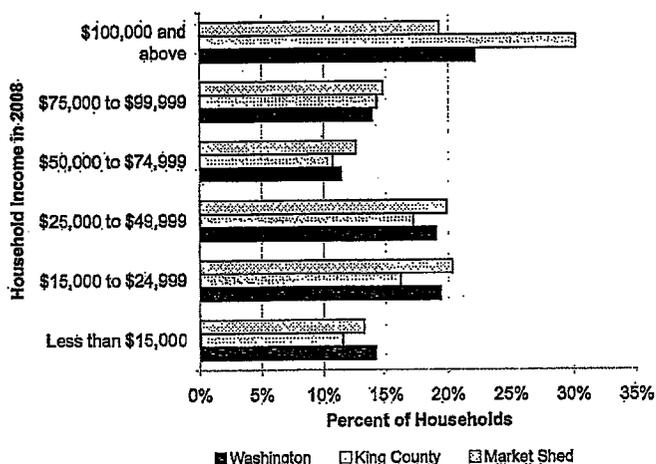
**Summary: Comparative disadvantages for development in the TUC:**

- Relatively lower-income market
- Need to create a residential community in an auto-oriented retail center
- Lack of publicly-owned land limits options for open space and catalyst projects
- Declining strength of retail market
- Large, unconfigured parcels

Figure 4 shows household incomes in the approximate market shed for the TUC relative to statewide incomes and incomes in King County. The data show that households in the TUC's market shed have average incomes lower than households in just King County. King County's average higher income is influenced by the higher incomes in Seattle. This affects potential development types in the TUC because Seattle, immediately to the north, is more likely to capture the highest income households, for both residences

and retail sales. Higher end residential development and higher retail rents are more easily obtained in Seattle, and the TUC will have to compete with well-established mixed-use areas in Seattle and other King County locations.

**Figure 4. Household incomes in market shed, King County, and Washington State, 2008**



Source: Claritas, Inc. and WashingtonProspector.com.

The existing development pattern is very different than the proposed vision for the TUC. There are currently no residential uses in the area, and there is very little pedestrian traffic for neighborhood-serving retail. These factors make it challenging to create an urban neighborhood.

The existing land ownership pattern is primarily made up of large parcels, discussed above in the factors that favor development. The downside of the existing land ownership patterns is that parcel division is costly. New roads to access the parcels may need to be constructed. The cost of the new urban infrastructure is not trivial. Outside of urban centers it is normal for the private sector to pick up many key infrastructure off-sites—however land and construction are less costly. In urban centers land is a greater part of development costs, and since development is taller and there is often a need for structured parking, development costs are higher. Adding off-sites, such as parking, to the equation could further disinterest developers since current rents will be even less able to make their projects profitable. However, greater economic benefits can be achieved by breaking up larger parcels with new streets, gaining more locations at intersections and increased street frontage for businesses which translates into higher rents, better access and visibility, and increased pedestrian and vehicular traffic.

Some cities require developers to build off-site infrastructure, some do not, while others share offsite costs with developers. If the City does require developers to fund all the off-site infrastructure, it may discourage developers from considering the TUC. To avoid adding yet another layer of development costs in a highly competitive market it may be worth exploring how the City of Tukwila can effectively share some of the off-site burden so that it can achieve the larger goal of securing envisioned development.

Another constraint is that all the large parcels appear to be privately owned which can impede the ability to initiate redevelopment through a demonstration project. This

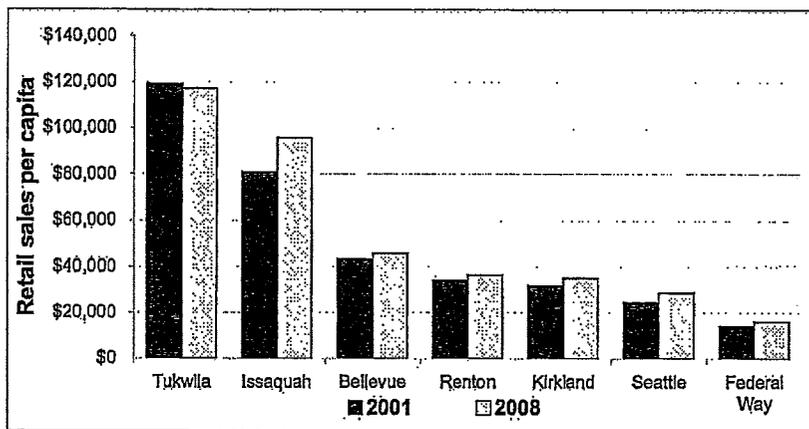
ownership pattern limits the City's ability to direct and support redevelopment. The City has no land it can offer for sale—a tool a City can use to its advantage to require specific development types. This also limits the City's ability to create attractive open space without first acquiring land. The lack of publicly held land limits the City's tools to encourage redevelopment—it cannot use its own site for a catalytic project.

Figure 5 shows retail sales per capita in Tukwila and other nearby cities. Tukwila's per capita retail sales have greatly exceeded nearby cities for many years; in 2001 it captured 9.3% of all sales in the cities shown in the figure.

The state of Washington's tax structure makes retail development a revenue generator for local governments. In years past, the City's coffers have benefited from the substantial retail development in the TUC. But other cities have worked to increase their share of retail sales. Tukwila's share of retail sales of the cities in Figure 5 fell to 7.8% in 2008.<sup>2</sup>

Tukwila does not impose a local B&O tax, as a result, the City is very dependent on its sales tax revenue.

**Figure 5. Retail sales per capita, 2001 and 2008**



Source: Washington State Department of Revenue, City-Data.com.

The long-term economic and demographic conditions create competitive advantages and disadvantages for the TUC Plan. Its primary advantage is the central location with good transportation access. Also, the existing retail base is strong with healthy brands which tend to promote synergy among retailers. The primary challenge to achieve the vision in the draft TUC Plan is to create a residential-friendly area. The complete

<sup>2</sup> Some of the drop may be attributable to a change in Washington state's sales tax distribution system. The tax is now applied to the community a purchased item is delivered. If someone purchases a good in Tukwila and takes that good at the time of sale, Tukwila receives the sales tax. But if the individual has the item delivered to a different jurisdiction, that different jurisdiction receives the sales tax. The change is expected to affect furniture and large appliance sales.

absence of any residential development means that it must start from scratch, and redefine the existing perception of the TUC. This requires public investment in the potential amenities of the area, so that developers considering the TUC can see the advantages outweigh the disadvantages.

### **3 DEVELOPMENT MARKET ECONOMICS: THE SHORT-RUN**

The current economy has negatively affected development and redevelopment in almost any form. This economic downturn is particularly difficult for new development. Not only is demand depressed with overall economic conditions, but the financial sector has been greatly affected. The financial sector is unwilling to make loans for development—equity in a project must be very high, prohibitively high for most developers. Financing terms are not only more onerous than there were during the boom of 2006 and 2007, they are more onerous than they have been for a long time before that. Most development projects are simply unable to get financing in 2009. Financing terms are expected to remain tight throughout 2010, and there is a lot of uncertainty about when and how conditions will change.

The depressed economy and curtailed consumer spending have hurt the retail sector. Retail vacancies are increasing as some retailers exit the market. Remaining retailers are typically generating lower revenues, which in turn negatively affects the rents those firms are willing to pay. Some retailers have been able to negotiate lower rents. If retail rents decline or stagnate, the expensive development types envisioned for the TUC (i.e., taller, mixed-use structures, and facilities that require structured parking) become less viable.

The property and business owners in the TUC have expressed concerns that the draft TUC Plan and development code require types and densities of development that are not economically feasible in today's market, and much of the draft Plan is based on a market analysis conducted in 2002 that is now outdated.

#### **3.1 DEVELOPMENT PROTOTYPES AND PRO FORMAS**

A new look at the market, however, is certainly warranted within the context of attempts to understand how the proposed code will affect property owners and developers as they work to improve their properties. To understand how existing market conditions (construction costs, rents, financing terms) affect the potential development in the TUC, ECONorthwest created four prototype developments with accompanying financial pro-formas that comply with the Code outlined in the draft Plan to illustrate how those developments might work both physically and financially.

A pro forma is an essential tool to a developer to determine if a proposed project "pencils out". If costs exceed revenues, the project will not receive financing, and will not get built without some subsidy. The pro formas use expected development cost and revenue data for building and use type to determine cash flow.

The pro formas in this section are based on prototype buildings. ECO worked with the City to determine prototype developments that were most indicative of the vision for the future of the area and we then applied the proposed development code to the buildings, to determine how the code affected structure type and cost. The prototype buildings are hypothetical—they are not real or proposed structures.

In this section, we discuss the pro formas for four building prototypes:

1. Mixed-use mid-rise building
2. Office tower
3. Residential tower
4. Adaptive re-use of big box retail

For each prototype, we analyze four financing scenarios:

- The current, constrained market, with the lender loaning 65% of the project costs at an 8% interest rate.
- A "normal" market, based on financing terms typically available before the mid-2000s. This scenario has the lender loaning 80% of the project costs at a 6% interest rate.
- Current market conditions supported with a second loan from a public agency. The bank lends 65% of the cost at 8% interest. A second public loan covers 25% of the cost at 1% interest.
- A "normal" market, based on financing terms typically available before the mid-2000s with a second loan from a public agency. The bank lends 80% of the cost 6% interest. A second public loan covers 10% of the cost at 1% interest.

ECO made a variety of assumptions to develop the prototypes and the pro formas. It is important to remember that the assumptions are preliminary and incomplete. A real development would conduct a much more detailed analysis based on known conditions and costs of development forms. But the analyses reveal important information about TUC development code. All the pro formas made these assumptions:

- We assumed land division was necessary for all prototypes.
- No off-site costs were included. As discussed above, these costs can be significant.
- The parking spaces do not produce revenue. The analysis assumes parking (structured and surface) is free.
- All residential units are rental apartments. We did not consider any condominiums in the analysis.
- Other assumptions (e.g., construction costs, unit sizes, etc.) were based on interviews with industry professionals and our experience in the field. The assumptions vary by prototype.

- ECO understands that the ground under the TUC is not composed of stable soils. To meet building standards, piles had to be driven into the ground for a recent construction project. Tall structures can be built in the TUC, but the local geology increases the costs. ECO has probably underestimated the cost of construction, given the geology of the area.
- ECO calculated the fair market value of the structure by dividing the net operating income (NOI) by a capitalization rate of 8.5%.<sup>3</sup>
- To determine the 'created value', we subtracted the development costs from the fair market value.

Table 2 shows the rents (triple net<sup>4</sup>) and parking ratios ECO used in the pro formas for the four development types. The parking ratios are based on Code requirements. To determine appropriate rents, we interviewed local commercial real estate brokers.

**Table 2. Rent and parking requirements used in pro formas**

Use	Rent per SF per Year (NNN)	Parking Requirements
Office	\$18.00	3.0 spaces/1,000 sf
Retail	\$20.00	3.3 spaces/1,000 sf
Restaurant	\$17.00	6.0 spaces/1,000 sf
Residential	\$20.40	1.0 spaces per bedroom w/ max of 2.0 spaces per d.u.

Source: ECONorthwest.

Based on the assumed square footage in the prototypes and the rent per square foot, the residential rents are:

- 1-bedroom—\$1,360 per month
- 2-bedroom—\$2,040 per month
- 3-bedroom—\$2,550 per month

The residential rents are higher than current rents in Tukwila, and more similar to rents seen in Redmond and central Seattle. An example project in the metropolitan area achieving these rents is the Union Bay Loft Apartments on East Lake Avenue in Seattle. Tukwila will require significant rebranding to achieve these residential rents. We used them as a starting point in the pro formas because no market for residential development currently exists in the TUC, and it is unlikely that any significant

<sup>3</sup> ECO interviewed local real estate professionals to determine local capitalization rates. We were told that the market is in such a state of flux at this time that there is no consensus on capitalization rates. The 8.5% cap rate is an estimate of current cap rates.

<sup>4</sup> A triple net (NNN) lease is a lease agreement where the lessee pays rent as well as taxes, insurance, and maintenance expenses.

residential development would be constructed without at least some rebranding and very active marketing occurring.

### 3.2 RESULTS OF PRO FORMAS

This section summarizes the results of the pro forma analyses. Appendix B of this memorandum shows detailed information about the building description and the pro forma analysis.

Table 3 shows basic data about the size and uses for each of the four prototypes. It also shows the estimated cost of development and ECO's calculated fair market value. The cost estimates (detailed in Appendix B) include the cost of land, based on average price per acre in the Urban Center, from the Tukwila Assessor's database. Construction costs are based on estimates provided by Ankrom Moison Architects and Howard S. Wright Constructors, in September 2009. The cost estimates do not include the cost of any off-site infrastructure improvements, which, as stated previously, could be fairly significant.

ECO calculated the fair market value of the structure by dividing the net operating income (NOI) by a capitalization rate<sup>5</sup> of 8.5%. To estimate the NOI, ECO used the rents described above, assumed vacancies over times, and a management fee. To determine the 'created value', we subtracted the development costs by the fair market value.

**Table 3. Size and calculated value for prototypes**

	Prototype			
	Mixed-use Mid-rise	Office Tower	Residential tower	Adaptive Re-Use
Total floors	6	6	11	2
Gross SF (excluding parking)	80,000	157,000	161,000	90,000
Useable SF	68,000	133,450	136,850	76,500
Uses	Residential Ground floor retail Parking	Office Ground floor retail Parking	Residential Ground floor retail Parking	Office Ground floor retail Restaurant Parking
Development Cost	\$22,088,572	\$37,614,700	\$52,777,129	\$11,196,188
Fair Market Value	\$14,388,640	\$27,017,463	\$30,831,914	\$15,532,688
Created Value (Cost-Value)	(\$7,699,932)	(\$10,597,237)	(\$21,945,215)	\$4,336,500

Source: ECONorthwest.

The first three prototypes yield a building that is more expensive to build than it would be worth. The pro forma analyses show that, even with fairly optimistic

<sup>5</sup> The capitalization rate (cap rate) is the ratio between the NOI produced by an asset and its market value. A market cap rate is determined by evaluating the financial data of similar properties which have recently sold in a specific market. ECO interviewed local real estate professionals to determine local capitalization rates. We were told that the market is in such a state of flux at this time that there is no consensus on capitalization rates. The 8.5% cap rate is an estimate of current cap rates.

residential rents, not including off-site costs, and possible underestimating construction costs given geologic issues in the area, the taller buildings do not pencil out.

The pro formas also calculated rates of return, under the four financing scenarios described above. Detailed results are in Appendix B. ~~The pro formas show that the first three prototypes – the multiple story buildings – could not get bank financing in any market, nor with some subsidized loan.~~ For the three taller buildings, the following is true:

- The Loan-to-Value ratio is too high. In typical market conditions (i.e., not the current constrained financial market), lenders can require a ratio of 0.80. Under any market conditions, lenders will not finance a commercial project if the loan exceeds the value of the project, yielding a loan-to-value ratio greater than 1.0. The three taller buildings all have loan-to-value ratios of 1.0 and higher.
- The debt coverage ratio (DCR)<sup>6</sup> is too low. Lenders typically want the DCR to be at least 1.20, to ensure there is a cushion so that if the NOI becomes less than anticipated, the borrower will still be able to make the mortgage payments. The three taller buildings have a DCR less than 1.0, and the Residential Tower has a DCR of about 0.8.
- The internal rate of return (IRR)<sup>7</sup> on equity is negative. For the three taller buildings, the equity investor (the developer or other private investors) would lose money on the project.

The fourth prototype, an adaptive re-use of an existing structure, is the only prototype that pencils out. For that prototype, the cost of parking was very low. ECO assumed that most of the required parking could be accommodated by the existing extensive surface parking. The construction costs per square foot were significantly lower than for the other, taller, prototypes. The one cost that exceeded the other prototypes was for the land, which was more expensive because it was a larger parcel.

The adaptive re-use prototype yielded a structure whose fair market value exceeded the cost of construction. The pro forma calculation showed that the prototype could get financing, even in today's difficult markets. The loan-to-value ratio is low, well under the ratio of 0.80 that lenders require. The DCR is high, well in excess of the 1.20 DCR that lenders prefer. The IRR is low in the financial scenario that represents today's difficult financing terms. Under more normal markets, the IRR is a healthy 19%.

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<sup>6</sup> The debt coverage ratio (DCR) is the ratio of NOI to the mortgage payment. If the NOI is \$120,000 and the mortgage payment is \$100,000, the DCR is 1.2.

<sup>7</sup> The internal rate of return (IRR) measures the return on an investment, expressed as a compound rate of interest, over the investment period. It is the interest rate at which the costs of the investment lead to the benefits of the investment.

## 4 IMPLICATIONS AND RECOMMENDATIONS

Based on the analysis and input from stakeholders, we conclude that the draft TUC Plan's vision of a more urban, mixed-use neighborhood is a desired outcome for most stakeholders with whom we talked. But the draft Plan and its development code require a type of development that is not financially viable at this time because of uncertainty in the financial market, and is more likely to be viable even upon the market's return with significant public investment in amenity and infrastructure. ~~In short, ECO found that many of the code-related concerns expressed by the stakeholders were realistic and that some changes to the City's draft Plan and accompanying code could be helpful.~~

At the same time, however, almost all of the stakeholders agreed that the vision described in the draft Plan is the right long-term goal for development in the TUC. Given the comparative advantages of the TUC, ECO feels that the vision is achievable, but in phases and over a period of time ~~and only with significant, targeted public investments~~ to catalyze and support development of the type that the City would like to see.

~~ECO recommends the City take the following steps to ensure that the long-term vision can be gradually implemented. We have divided the recommendations into two general categories: (1) change the development code, and (2) catalyze development.~~

### 4.1 CONSIDER AMENDMENTS TO THE DRAFT SOUTHCENTER PLAN DEVELOPMENT CODE (CHAPTER 18.28)

The draft TUC development standards are intended to implement the City's long-term vision for continued growth in the urban center. As noted earlier in this report, stakeholders have expressed concerns that the draft TUC plan development regulations may be overly complex and/or may conflict with interim market realities. ECO reviewed the Code in conjunction with potential prototypes included in this report, conducted interviews (focus groups) with key stakeholders, reviewed written comment from property owners and developers, and generated the recommendations in this section.

**Organization and complexity.** Some of the stakeholders noted that the code seemed to be overly complex. ~~A certain level of unfamiliarity is expected when a City implements a new code or code section.~~ In this case, the TUC code section also represents a shift towards form-based code, which is by nature less familiar to developers and property owners than a more traditional code. The code may appear to be more complex than it actually is: while it may appear to be confusing to a casual reader, it is designed to provide certainty by prescribing detailed and objective standards for a property owners and developers--while minimizing discretionary and interpretive decisions that can erode certainty about what the code will and will not allow.

- **Thresholds that trigger compliance with TUC standards.** Some stakeholders noted that the thresholds that trigger compliance with TUC standards may disproportionately limit or discourage interim investment in existing structures. Any new or revised development code must be accompanied by clear thresholds for compliance, as this draft contains. The thresholds are intended to ensure that major investment within the TUC aligns with the vision set forth in the plan, while allowing continued operation and maintenance of existing businesses and structures. Thus, it is typical to require new construction, expansions, alterations and changes in use to comply with a new or revised code. The actual thresholds for what constitutes an alteration, however, must be defined locally. It is our understanding that the City derived the thresholds through a careful review and analysis of building permits from prior years and therefore represent levels of investment—both in absolute dollars and percent relative to total value—that are appropriate for Tukwila.
- **Parking requirements.** Stakeholders who participated in the focus groups discussed the possibility of eliminating parking minimums and maximums. Our analysis shows that the costs associated with constructing parking to meet the TUC code's minimum parking requirements is the single biggest factor affecting the financial performance of the prototypes analyzed in this report. On one hand, the suburban-level parking requirements in the TUC conflict with the City's vision of higher intensity, urban development. (That is, a vibrant, pedestrian-oriented urban center, requires a shift away from large surface parking areas while the minimum parking requirements in the TUC are set at levels more appropriate for surface level parking). On the other hand, a lack of sufficient parking during the interim may have negative consequences on new and existing businesses.

We recommend that the City consider a phased approach that first reduces, and then eliminates, parking minimum requirements in close coordination with ongoing transportation demand management (TDM) strategies and efforts to increase on-street (metered) and shared parking. The City would first establish benchmarks for developing on-street parking spaces and shared parking arrangements --and consider phasing in reduced parking minimums for new development as these benchmarks are met. It would be necessary to coordinate with other ongoing TDM strategies that can help alleviate the demand for parking over the long-term, such as increasing use of alternative modes, carpool/vanpool, and parking pricing, which are outlined in the City's Growth and Transportation Efficiency Center Program (GTEC).<sup>8</sup>

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<sup>8</sup> The GETC plan includes a comprehensive strategy for transit, carpool/vanpool, marketing, bicycle/pedestrian opportunities, telecommuting, and rideshare. It recommends that the City work with employment sites to encourage them to implement parking management strategies, such as reducing parking capacity and implementing preferential parking for carpools and vanpools.

- **Minimum height requirements.** The minimum height requirements prescribed by the Scale Standards 18.28.031 require a 25-foot tall structure for anchors, pharmacies, and groceries. For other uses, a second floor is also required. This requirement is triggered by any expansion and substantial alterations to a building. A building owner who wishes to expand an existing use will be required to build a second floor. This may or may not be feasible, depending on the age and type of existing building, parking requirements, etc. While this may be the intent of the Code, it may have the effect of discouraging interim investment in existing buildings. We recommend that the City consider reducing or eliminating minimum height requirements for upgrades to or adaptive re-use of existing single story buildings.
- **Tower bulk and minimum frontage requirements.** The minimum frontage requirements (in conjunction with tower bulk requirements) appear to anticipate smaller sites than those that exist now in the TUC, which may result in conflicts depending on the size of the site and how site is defined. For instance, a one-acre, square site (as defined by property lines) on an urban corridor would have roughly 208 feet of frontage. A building on that site would be required to cover at least 90% of the frontage on an urban corridor, which would equate to a building that is 187 feet in length. Likewise, a two-acre site could easily have 300 or 400 feet of frontage, which would require a 270 feet to 360 feet building. A square (or L-shaped) building of this dimension would likely exceed the tower bulk requirements. We recommend that the City consider revising tower bulk requirements or allowing flexibility to ensure that frontage requirements can be met, particularly in the short- and medium-term
- **Open space requirements.** Stakeholders noted that the open space requirements may be too prescriptive. We note that the amount and type of pedestrian space required in section 18.28.060 is consistent with other cities in the northwest. The requirements allow flexibility in the type of pedestrian space required (linear green, square, plaza, courtyard, etc), the location, and configuration as long as certain requirements are met (e.g., access to sidewalks and visible from sidewalks etc). Further, the code allows flexibility at the discretion of the Director in situations where small or awkwardly shaped properties limit options for on-site pedestrian space, and in situations where common open space may be more appropriately provided off-site as part of a larger open space area provided by one or more developments.
- **Fire code.** In order to make the Plan more economically viable and competitive with other cities, it is recommended that the fire code be revised to enable mid-rise construction for buildings that are up to 65 feet. This would make it possible to build five floors of residential or office over one story of retail. These buildings tend to be more economically viable in many markets and reinforce activated ground floor goals in these communities.

## **4.2 PLAN TO CATALYZE DEVELOPMENT**

Inspired plans, progressive land use regulations, and development codes cannot alone actualize a vision in most markets. Given current uncertainties in the financial markets, the repositioning occurring in various real estate asset classes, and limited public programs and funds to assist development, ~~the City should assess the potential to catalyze development over an intermediate and longer term.~~ This section provides sample actions and tools the City could use to form and implement a redevelopment strategy for the TUC. Some of these actions can be initiated immediately to help the City and TUC prepare for the economic rebound while others will take more preparation and time enabling the TUC to benefit during future investment cycles.

### **4.2.1 Short-term actions (one to two years)**

#### **Get the facts**

The City should gather additional information and data about the area that will be needed for prudent development decisions. City planners and development staff should be familiar with market and construction issues for the TUC and track these items over time. Some of the data are:

- land and building values;
- rents for all asset classes;
- construction costs for desired building types;
- land ownerships and status;
- dynamics of the real estate lending market
- a clear understanding of water, soils, and other environmental challenges;
- projected needs and targets for various uses, with particular attention on workforce and affordable housing goals

#### **Establish a lead redevelopment entity**

Identify or establish a lead redevelopment entity on the public side to coordinate implementation of a TUC redevelopment strategy and provide it with resources (people and tools) to succeed. The City could make this function the responsibility of an existing department or create a new entity.

#### **Consider rebranding Tukwila**

The City appears to have two images—one acknowledges it as a strong regional retail shopping center while a second plays on less positive perceptions and realities around public safety and socio-economic issues. For the TUC to succeed, the image of Tukwila will need to be more reinforcing of mixed-use development for customers, tenants and developers. Part of that repositioning can be done through development of a fresh

brand for Tukwila. Taking advantage of assets such as waterfront amenities, central location, affordability and quality, etc. to develop the brand could be advantageous.

### **Ensure that light rail, bus transit, and commuter rail are effectively linked**

An integrated and dependable system can foster growing and repeat ridership. This will make the area more viable for office and residential uses.

### **Create a public sector redevelopment tool kit**

Identify existing public resources/tools that can be used to partner on implementing a redevelopment strategy. Adopt, adapt and/or create new tools if existing programs are insufficient.

~~In the short and long term, the City will have to offer developers some assistance in order to achieve the community's goals for the TUC.~~ The City should determine what incentives it is willing to offer and the criteria for using them so that informed redevelopment decisions for strategic investments can be made when opportunities arise. Some incentives can be applied administratively while others may require action by elected officials. Incentives that might be available to the City include:

- Low-interest loans to leverage private development investments for adaptive reuse or expansion of existing buildings as well as for creation of new developments. Possible fund sources include: HUD Section 108, Federal Stimulus program funds, SBA 504 program, federal Economic Development Administration loans.<sup>9</sup>
- Purchase or option land and re-sell it at below-market prices to qualified developers.
- Utilize revenue bonds (e.g., 501(c)(3), and 63-20 bonds to support public and non-profit projects that enhance the mix of uses in the TUC.
- Fund pedestrian and other mobility improvements.
- Acquire and develop open space areas in strategic locations.
- Construct or participate in financing a parking garage to support catalytic development.
- Focus impact fees from the TUC to uses that benefit development in the center or reduce these fees for qualifying projects.

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<sup>9</sup> Any lending program will need to be evaluated to ensure it is within Washington State's lending of credit provisions.

## **4.2.2 Intermediate and long-term actions (two years and beyond)**

### **Prepare a Collaborative Redevelopment Strategy for the TUC**

Collaborate with area property owners, businesses, and community members to capitalize on the TUC vision and plan by crafting a redevelopment strategy that clarifies and secures buy-in for actions that will move redevelopment forward. The stakeholders know the area well and will be able to provide helpful insight into developing an effective strategy. The strategy should identify key projects, responsible entities on the public and private sides, and potential funding approaches. Elements that could be incorporated into the strategy are:

- Secure agreement on where critical new streets would be. These will be major streets that begin to create new development parcels and will provide important community connectivity and development predictability.
- Identify the number, type and potential locations for the most important open spaces.
- Identify desired priorities for public improvements (e.g., open space, structured parking, pedestrian amenities) and how these could be funded. Link their implementation timing to private investment in significant development.
- Identify alternative starting areas for redevelopment. Use the stakeholders' knowledge to identify the areas most likely to be catalytic and that will build momentum. Look for proximity to existing active areas, or potential to redevelop key intersections.

### **Choose approach(es) to initiate redevelopment**

Based on the data and input from stakeholders, choose among alternatives approaches (one or more) to initiate redevelopment:

- Purchase or secure options on site(s), have the tool kit ready and solicit developers, preferably through a request for qualifications (RFQ).
- Partner with private sector owners who control strategic sites to refine a development concept on their property. Identify the amount of risk the private owner is willing to assume in the property's redevelopment. Memorialize property owner's position and the City's in an agreement between the City and property owner. Then have a tool kit ready and solicit developers.
- Offer public assistance and tool kit programs on a first-come/first-serve basis. (This is often a less focused approach than either of the above and will require guidelines such as: site needs to be consistent with City vision and plans for area; development concept needs to be viable with reasonable employment of public tool kit, etc.) It is also an approach that can assist in retaining those existing businesses, particularly local operations or one-of-a-kind market entities,

that want to upgrade or are interested expanding within the TUC and that would enhance to use mix.

### **Implement the Redevelopment Strategy**

While the City is preparing the strategy it should continue to work with stakeholders to advance goals of the TUC plan. It should also take advantage of opportunities that present themselves to acquire key land parcels through options or in response to a property owner/developer presenting a viable project consistent with the draft plan's objectives for redevelopment.

Once the redevelopment strategy has been vetted and approved, and the public implementing entity is operational with staff and a redevelopment tool kit, the strategic actions identified above can be more effectively initiated. The City can assemble key parcels (through options or outright purchases) or collaborate with willing property owners to solicit qualified developers preferably through a RFQ process.

Upon developer selection the City can enter into pre-development agreements which, while non-binding, establish a good-faith path for the participating parties to flesh out a development project and clarify expectations of each party to the agreement (e.g., timing for various development steps from due diligence on a site to anticipated construction completion, projected uses, desired public amenities, potential financing sources, etc.). Predevelopment agreements provide the groundwork for eventual development agreements that legally bind public and private parties by committing resources to complete a project.

While larger-scale catalytic projects are eagerly sought by most cities, a more realistic approach usually involves starting with smaller scale but important momentum-generating projects. Gaining momentum with a series of successful smaller and mid-sized projects can bring greater confidence to the investment community that the larger-scale projects can be viable. This is particularly valid when those early projects are of high quality and in close proximity enough to create a sense of place in an emerging area.

## **APPENDIX A: FOCUS GROUP PARTICIPANTS AND NOTES**

### **Focus group participants and interviewees**

The following individuals participated in the focus groups or were interviewed by ECONorthwest:

#### **Developers**

- Don Milliken, Milliken Development
- Pat Callahan, Urban Renaissance Group
- Bruce Lorig, Lorig Associates
- Kristin Jensen, Tarragon Development

#### **Brokers**

- Don Moody, CBRE

#### **Local Business & Property Owners**

- Mon Wig, Wig Associates LLC
- Tom DeZutter, Double Tree Hotel
- Robert & Christian Schofield, RHS Enterprises
- Randy Bannecker, Bannecker & Associates (representing Sears)
- Dawna Holloway, Eastbay Sculpture & Lighting
- Brandon Lee, Target Corporation
- Mark Hancock, Segale Properties

#### **Westfield Corporation**

- Nicholas Lee, Development Manager
- John Goodwin, VP of Development
- Antony Ritch, Senior VP
- Andy Ciarrochi, Senior General Manager
- Brent Carson, Gordon Derr (representing Westfield)

#### **City of Tukwila**

- George Malina, Planning Commission Chair
- Jack Pace, DCD Director
- Nora Gierloff, DCD Deputy Director

- Lynn Miranda, Senior Planner
- Derek Speck, Economic Development Administrator

### **Focus group and interview notes**

The following summarizes the comments received during the focus groups and interviews:

#### **Office space**

- Explore opportunity for Class A office market in proximity to the airport. Is there market potential? What building types (heights, sq ftg, costs) would be needed? Does plan support this? Where? What else can be done to capture benefits of airport (ie, for hotel development).
- To make the UC more viable for office, need to ensure that light rail, bus transit & commuter rail are effectively linked.
- To kick start office development, need a "signature" office development - large. Ground breaking building may be 100k sf - ultimately need something larger.
- Need more office/biotech type of uses. These are the people that will live here.
- Labor, housing & availability of 'ground' are decision points for major corporations to locate in UC. Tax breaks (including lack of B&O) that Tukwila offers are not significant attractors. High end office needs amenities - parks are important. Corps look for large, contiguous parcels and the ability to grow in place.
- Office development around the mall would be good.
- Office, rather than housing, should be built around the Sounder Station since people will walk farther (1/2 mile) from their homes than their place of work.

#### **Proposed Standards**

- Need more flexible approach towards complying with standards for adaptive re-use projects.
- Horizontal mix of uses is "coming back".
- Incentives / code changes / implementation steps suggested:
  - Impact fee waivers (or sole source use areas if they are collected)
  - Sign code modification
  - No parking minimums or maximums are really needed -- the market will drive this. Think about setting a maximum for on-street parking.
  - Parking costs make new development of any real density untenable. Consider a public parking garage.

- Consider phased implementation of code. Concerns about short-term impacts of prescriptive code until the market is there to better support the development types envisioned.
- Complete a development study to identify key opportunity sites, market those sites, or consider acquiring them to incent development (through options if necessary or more feasible)
- Consider developing a public park next to a proposed office site.
- Non-binding pre-development agreements with owners of key sites
- Consider eliminating height restrictions.
- Revisit building/fire code's definition of high rise. 40' threshold is a problem. 70' is typical. Must allow 5/1 configuration for residential development to occur.
- Ground level retail spaces need 18-24' in height.
- Tukwila is not right for street fronting retail yet.
- The TUC Plan is too specific. Give developers flexibility so they come up with creative solutions. Don't be too prescriptive.
- Mixed-use development is complicated. The parking, lay out, and exhaust systems are complicated. And to be successful, it must be done right. For example, residents don't want to hear beeping truck. Every development has its own unique solution, cookie-cutter development will not work for something this complicated.

### Strategies to Consider

- Current tax & permit policy supports the types of development (single story retail) that is here today. Policies need to change if city wants to achieve the vision.
- Consider a new strategy / revenue sources to support development. Low taxes might work for business recruitment, but don't do much for business.
- A shift in employment base is needed -- current retail employment won't attract residents in demographics needed to support the development costs associated with new mixed-use residential developments
- Audience matters in marketing efforts: developers will be interested in different factors than residents or shoppers. A single-pronged strategy probably won't be effective.
- Explore models that work in or may be adaptable from other communities (Sanctuary at Renton Landing)
- City needs to make strategic choices about where to invest and how to best leverage its limited resources.

- Branding or rebranding Tukwila -- how do developers, customers, others become more positively associated with Tukwila
- To do nothing in the UC is not OK; good developments will bypass the city and go elsewhere.
- Look at Americana at Brand, Caruso project in CA. Good models.
- City should do a study of specific properties to determine vulnerability/how much it would take to relocate them.
- High quality development can cost a lot, maybe \$200 to \$300 a foot. But it is done well and new, appealing place is created with a real town center, the area could command rents as high as \$30 a foot (per square foot per year).
- Tukwila has a good location, it's a good opportunity. There is no reason a core cannot be created in Tukwila .

### Catalyst Project/Investments

- Major infrastructure investments are needed to achieve the pedestrian-friendly finer street grid in the vision. The costs probably can't be born by developers, or they'll just choose to go elsewhere.
- City should plan to capture development two cycles from now. Catch revenues on the next upswing, and invest that in infrastructure and amenities that will make development attractive in the upswing that follows. Need to find the political will to make these investments, or the plan won't happen.
- Development has to attract institutional capital to pencil out. Need to have 'evidence on the ground' to convince investors. Plan alone will not work. Need a significant public investment first; provides a 'story to tell'. Pick a place/project.
- Make significant public investment, then develop a marketing center for plan on Baker Blvd (similar to that for S. Lake Union project in Seattle).
- Lack of publicly owned land in UC presents challenges.
- Parking structures are expensive because of soils/geology. Subterranean parking is HUGE cost. Parking agreements make reductions in parking spaces impossible. Many other malls have transportation alternatives up and running before parking reductions occur.

### Land Use

- Focus on improving the quality of retail versus increasing the quantity.
- Coming changes at the mall:
  - # of national tenants reinventing themselves
  - Anchor tenants may move
  - new types of tenants coming into the mall.

- To enhance the appeal of residential development, the area needs a grocery store. It's a necessity for people who want to live in an urban area. Residential rents increase with proximity to a grocer—but it can't be a tired looking old kind of grocery. It has to look good.

**'Transportation' - related**

- Heard at several focus groups: Access issues (including changes to mode split) is key to making the vision happen. Need better auto circulation, access from freeways, signage (especially for retail).
- Mall doesn't see that transit is important to the Mall. Most shoppers come from east/west, not north/south. However, employees take transit.

## APPENDIX B: FINANCIAL PRO FORMA ANALYSES

This appendix provides detailed data and discussion for the four prototypes

### B.1 MIXED-USE MID-RISE BUILDING

The mixed-use mid-rise building is six stories high, with one floor of ground-floor retail, two floors of parking, and three floors of residential units and 20,000 s.f. footprint. Table 4 summarizes floor space by use type and Figure 6 shows the prototype.

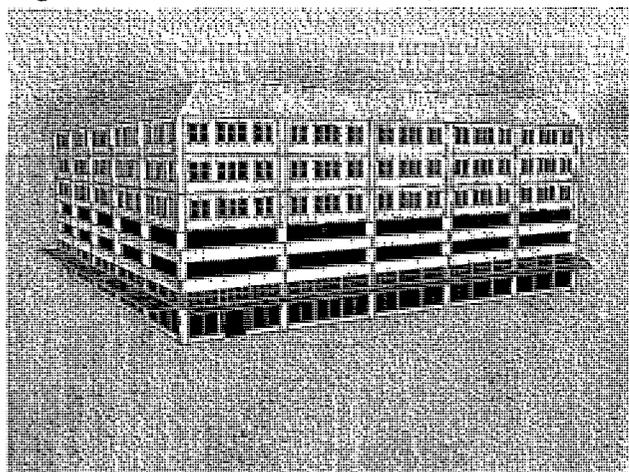
**Table 4. Mixed-use mid-rise building: uses, floors, and square feet**

Use	Stories	Gross SF	Useable SF
Residential	3	60,000	51,000
Ground floor retail	1	20,000	17,000
Parking	2	44,135	n/a
<b>Total (w/o parking)</b>	<b>6</b>	<b>80,000</b>	<b>68,000</b>

Source: ECONorthwest.

To determine the amount of parking that would be required, ECO relied on the TUC's development code: for retail, 3.3 spaces per 1,000 useable s.f.; for residential, 1.0 spaces per bedroom with a maximum of 2.0 spaces per dwelling units. Based on our assumed mix of unit sizes, the retail and residential units require 126 parking spaces. At 350 s.f. per space, parking requirements equal 44,135 s.f., which is 4,135 s.f. larger than the two floors of parking incorporated into the building. The prototype would require an additional 11.8 parking spaces to meet the development code requirements.

**Figure 6. Mixed-use mid-rise prototype**



Source: ECONorthwest.

The frontage requirements in the development code conflict with building length maximums for this prototype. The minimum linear frontage coverage is 90%, but the

maximum building length is 120 feet. This prototype has a footprint of 140' x 140', and 90% of 140 feet is 126 feet, six feet longer than the maximum building length.

The pro formas compare the cost of construction to a stabilized net operating income (NOI) based on estimated net rents. For this prototype, we assumed the following rents:

- Retail—\$20 per s.f. per year, based comparable retail properties for lease in the south Puget Sound
- Residential—\$1.70 per s.f. per month, or
  - 1-bedroom—\$1,360 per month
  - 2-bedroom—\$2,040 per month
  - 3-bedroom—\$2,550 per month

The residential rents are higher than current rents in Tukwila, and more similar to rents seen in Redmond and central Seattle. An example project in the metropolitan area achieving these rent is the Union Bay Loft Apartments on East Lake Avenue in Seattle. Tukwila will require significant rebranding to achieve these residential rents

Our cost estimates (detailed in Appendix B) include the cost of land, based on average price per acre in the Urban Center, from the Tukwila Assessor's database. Construction costs are based on estimates provided by Ankrom Moison Architects and Howard S. Wright Constructors, in September 2009. The cost estimates do not include the cost of any off-site infrastructure improvements, which, as stated previously, could be fairly significant.

ECO calculated the fair market value of the structure by dividing the NOI by a capitalization rate of 8.5% (see Table 5).<sup>10</sup>

**Table 5. Mixed-use mid-rise building: development costs and value**

	<b>\$2009</b>
Total Development Costs	\$22,088,572
Fair Market Value	\$14,388,640
<b>Created Value (Cost - Value)</b>	<b>-\$7,699,932</b>

Source: ECONorthwest.

The pro forma shows that, even at optimistic residential rents, the mixed-use mid-rise building would cost \$7.7 million more to build than it would be worth.

<sup>10</sup> ECO interviewed local real estate professionals to determine local capitalization rates. We were told that the market is in such a state of flux at this time that there is no consensus on capitalization rates. The 8.5% cap rate is an estimate of current cap rates.

The pro forma also calculates rates of return, under the four financing scenarios described above. Table 6 summarizes the results. The analysis shows that it would be difficult for any developer to get financing on the mixed-use mid-rise prototype:

- The Loan-to-Value ratio is high. In typical market conditions (i.e., not the current constrained financial market), lenders can require a ratio of 0.80. Under any market conditions, lenders will not finance a commercial project if the loan exceeds the value of the project, yielding a loan-to-value ratio greater than 1.0.
- The debt coverage ratio (DCR) is low. Lenders typically want the DCR to be at least 1.20, to ensure there is a cushion so that if the NOI becomes less than anticipated, the borrower will still be able to make the mortgage payments.
- The internal rate of return (IRR) on equity is negative. The equity investor (the developer or other private investors) would lose money on the project.

**Table 6. Mixed-use mid-rise building: financing assumptions and return equity**

Financial Scenario	Bank Loan	Public Assistance Loan	Loan/Value Ratio	Debt Coverage Ratio	Equity Repayment Gap	IRR on Equity
1	65%	-	1.00	0.96	-\$15,030,073	-38%
2	80%	-	1.23	0.95	-\$8,654,736	-33%
3	65%	25%	1.00	0.96	-\$5,040,575	-13%
4	80%	10%	1.23	0.95	-\$4,793,470	-11%

## B.2 OFFICE TOWER

The office tower is nine stories high, with one floor of ground-floor retail, two floors of parking (partially submerged), and six floors of office space and 22,000 s.f. footprint. Table 7 summarizes floor space by use type and Figure 7 shows the prototype.

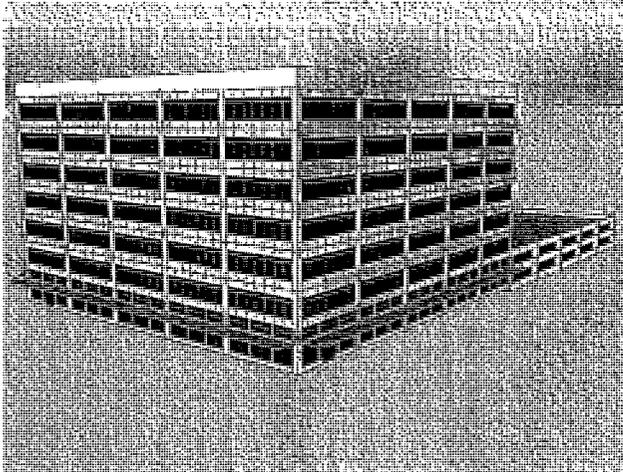
**Table 7. Office tower: uses, floors, and square feet**

Use	Stories	Gross SF	Useable SF
Office	6	135,000	114,750
Ground floor retail	1	22,000	18,700
Parking	2	70,000	n/a
<b>Total (w/o parking)</b>	<b>9</b>	<b>157,000</b>	<b>133,450</b>

Source: ECONorthwest.

To determine parking, ECO relied on the TUC's development code: for retail, 3.3 spaces per 1,000 useable s.f.; for office space, 3.0 spaces per 1,000 useable s.f. The retail and office space combined require 406 parking spaces, or 142,000 s.f. In this prototype, the parking was accommodated by placing the office tower on a larger podium of parking, because stacking the parking between the ground floor use and office use on the same footprint size would result in a building that is too tall to meet height requirements. The prototype leaves a deficit of 206 parking spaces, just over 72,000 s.f., to meet the TUC's development code requirements.

**Figure 7. Office tower prototype**



Source: ECONorthwest.

The pro formas compare the cost of construction to a stabilized net operating income (NOI) based on estimated net rents. For this prototype, we assumed the following rents:

- Retail—\$20 per s.f. per year, based comparable retail properties for lease in the south Puget Sound
- Office—\$18 per s.f. per year, the high end of office rents in the south Seattle market.

Our cost estimates include the cost of land, based on average price per acre in the Urban Center, from the Tukwila Assessor’s database. Construction costs are based on estimates provided by Ankrom Moison Architects and Howard S. Wright Constructors, in September 2009. The cost estimates do not include the cost of any off-site infrastructure improvements.

ECO calculated the fair market value of the structure by dividing the NOI by a capitalization rate of 8.0%. To determine the ‘created value’, we subtracted the development costs by the fair market value (see Table 8).

**Table 8. Mixed-use mid-rise building: development costs and value**

	\$2009
Total Development Costs	\$37,614,700
Fair Market Value	\$27,017,463
<b>Created Value (Cost - Value)</b>	<b>-\$10,597,238</b>

Source: ECONorthwest.

The pro forma shows that, even at top-of-the-market office rents, the office tower would cost \$10.6 million more to build than it would be worth.

The pro forma also calculates rates of return, under the four financing scenarios described above. Table 9 summarizes the results. The analysis shows that it would be difficult for any developer to get financing on the office tower prototype:

- The Loan-to-Value ratio is high. In typical market conditions (i.e., not the current constrained financial market), lenders can require a ratio of 0.80. Under any market conditions, lenders will not finance a commercial project if the loan exceeds the value of the project, yielding a loan-to-value ratio greater than 1.0.
- The debt coverage ratio (DCR) is low. Lenders typically want the DCR to be at least 1.20, to ensure there is a cushion so that if the NOI becomes less than anticipated, the borrower will still be able to make the mortgage payments.
- The internal rate of return (IRR) on equity is negative. The equity investor (the developer or other private investors) would lose money on the project under any financing scenario.

**Table 9. Office tower: financing assumptions and return equity**

Financial Scenario	Bank Loan	Public Assistance Loan	Loan/Value Ratio	Debt Coverage Ratio	Equity Repayment Gap	IRR on Equity
1	65%	-	0.90	1.00	-\$25,021,461	-34%
2	80%	-	1.11	0.99	-\$14,164,879	-29%
3	65%	25%	0.90	1.00	-\$7,712,877	-9%
4	80%	10%	1.11	0.94	-\$7,951,045	-33%

Source: ECONorthwest.

### B.3 RESIDENTIAL TOWER

The residential tower is 11 stories high, with one floor of ground-floor retail, four floors of parking, and six floors of residential units and 23,000 s.f. footprint. Table 10 summarizes floor space by use type and Figure 8 shows the prototype.

**Table 10. Residential tower: uses, floors, and square feet**

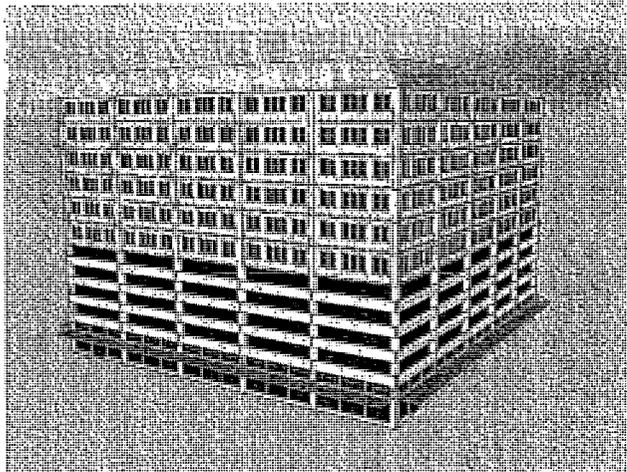
Use	Stories	Gross SF	Useable SF
Residential	6	138,000	117,300
Ground floor retail	1	23,000	19,550
Parking	4	80,680	n/a
<b>Total (w/o parking)</b>	<b>11</b>	<b>161,000</b>	<b>136,850</b>

Source: ECONorthwest.

To determine parking, ECO relied on the TUC's development code: for retail, 3.3 spaces per 1,000 useable s.f.; for residential, 1.0 spaces per bedroom with a maximum of 2.0 spaces per dwelling units. Based on our assumed mix of unit sizes (see Appendix B for details), the retail and residential units require 231 parking spaces. At 350 s.f. per space, parking requirements equal 80,680 s.f., which can be incorporated into four floors of this structure. This building type is limited to the Regional Center zone because of its

height. The parking requirements forced the height of the prototype, thereby limiting the zone in the TUC where this building could be built.

### Figure 8. Residential tower prototype



Source: ECONorthwest.

The pro formas compare the cost of construction to a stabilized net operating income (NOI) based on estimated net rents. For this prototype, we assumed the following rents:

- Retail—\$20 per s.f. per year, based comparable retail properties for lease in the south Puget Sound
- Residential—\$1.70 per s.f. per month, or
  - 1-bedroom—\$1,360 per month
  - 2-bedroom—\$2,040 per month
  - 3-bedroom—\$2,550 per month

Our cost estimates include the cost of land, based on average price per acre in the Urban Center, from the Tukwila Assessor's database. Construction costs are based on estimates provided by Ankrom Moison Architects and Howard S Wright Constructors, in September 2009. The cost estimates do not include the cost of any off-site infrastructure improvements.

ECO calculated the fair market value of the structure by dividing the NOI by a capitalization rate of 8.0%. To determine the 'created value', we subtracted the development costs by the fair market value (see Table 11).

**Table 11. Residential tower: development costs and value**

	\$2009
Total Development Costs	\$52,777,129
Fair Market Value	\$30,831,914
<b>Created Value (Cost - Value)</b>	<b>\$21,945,215</b>

Source: ECONorthwest.

The pro forma shows that, even at optimistic residential rents, the residential tower would cost \$21.9 million more to build than it would be worth.

The pro forma also calculates rates of return, under the four financing scenarios described above. Table 9 summarizes the results. The analysis shows that it would be difficult for any developer to get financing on the office tower prototype:

- The Loan-to-Value ratio exceeds 1.0 for all financing scenarios. In typical market conditions (i.e., not the current constrained financial market), lenders can require a ratio of 0.80. Under any market conditions, lenders will not finance a commercial project if the loan exceeds the value of the project, yielding a loan-to-value ratio greater than 1.0.
- The debt coverage ratio (DCR) is low. Lenders typically want the DCR to be at least 1.20, to ensure there is a cushion so that if the NOI becomes less than anticipated, the borrower will still be able to make the mortgage payments.
- The internal rate of return (IRR) on equity is negative. For this prototype, the cash flow is *never* positive. In the absence of any positive cash, the spreadsheet model was unable to calculate an IRR. The equity investor (the developer or other private investors) would lose money on the project under any financing scenario.

**Table 12. Residential tower: financing assumptions and return equity**

Financial Scenario	Bank Loan	Public Assistance Loan	Loan/Value Ratio	Debt Coverage Ratio	Equity Repayment Gap	IRR on Equity
1	65%	-	1.11	0.81	-\$39,232,026	n/a
2	80%	-	1.37	0.80	-\$23,999,172	n/a
3	65%	25%	1.11	0.81	-\$17,086,214	n/a
4	80%	10%	1.37	0.76	-\$18,154,488	n/a

Source: ECONorthwest.

#### B.4 ADAPTIVE RE-USE OF BIG BOX RETAIL

The adaptive re-use prototype is two stories high, with one floor of ground-floor retail that includes 10,000 s.f. of restaurant space, one floor of office space, and covered surface parking. The prototype assumes the structure is an existing big box store, with a 100,000 s.f. footprint. Table 13 summarizes floor space by use type and Figure 9 Figure 7 shows the prototype.

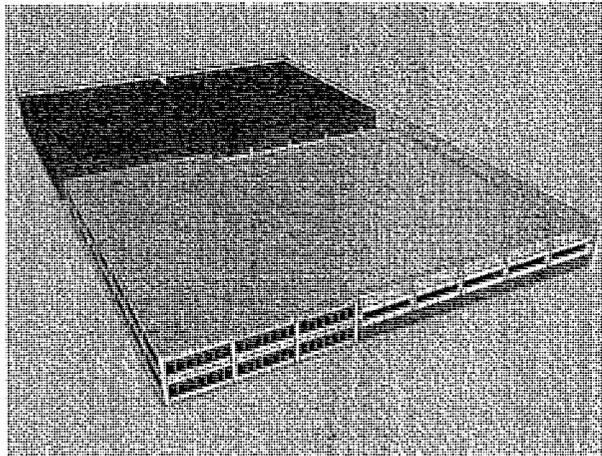
**Table 13. Adaptive re-use of big box retail: uses, floors, and square feet**

Use	Stories	Gross SF	Useable SF
Office	1	40,000	34,000
Retail	1	50,000	42,500
Covered Parking	0	30,000	n/a
<b>Total (w/o parking)</b>	<b>2</b>	<b>90,000</b>	<b>76,500</b>

Source: ECONorthwest.

To determine parking, ECO relied on the TUC's development code: for restaurant space, 6.0 per 1,000 useable s.f., for other retail, 3.3 spaces per 1,000 useable s.f.; and for office space, 3.0 spaces per 1,000 useable s.f. ECO assumed that most of the required parking could be accommodated by the existing extensive surface parking.

**Figure 9. Adaptive re-use of big box retail prototype**



Source: ECONorthwest.

The pro formas compare the cost of construction to a stabilized net operating income (NOI) based on estimated net rents. For this prototype, we assumed the following rents:

- Restaurant—\$17 per s.f. per year, in the middle of the range of retail properties for lease in the south Puget Sound.
- Retail—\$20 per s.f. per year, based comparable retail properties for lease in the south Puget Sound
- Office—\$18 per s.f. per year, the high end of office rents in the south Seattle market.

Our cost estimates include the cost of land, based on average price per acre in the Urban Center, from the Tukwila Assessor's database. The one cost that exceeded the other prototypes was for the land, which was more expensive because it was a larger parcel. Construction costs are based on estimates provided by Ankrom Moison Architects and Howard S. Wright Constructors, in September 2009. The construction costs per square foot were significantly lower than for the other, taller, prototypes. The cost estimates do not include the cost of any off-site infrastructure improvements.

ECO calculated the fair market value of the structure by dividing the NOI by a capitalization rate of 8.0%. To determine the 'created value', we subtracted the development costs by the fair market value (see Table 14).

**Table 14. Adaptive re-use of big box retail: development costs and value**

	\$2009
Total Development Costs	\$11,196,188
Fair Market Value	\$15,532,688
<b>Created Value (Cost - Value)</b>	<b>\$4,336,500</b>

Source: ECONorthwest.

This is the only prototype in the analysis where the fair market value exceeded the total development costs. The created value is roughly \$4.3 million.

The pro forma also calculates rates of return, under the four financing scenarios described above. Table 15 summarizes the results. The analysis shows that this project could get financing, even in today's difficult markets:

- The Loan-to-Value ratio is low, well under the ratio of 0.80 that lenders require.
- The debt coverage ratio (DCR) is high. It is well in excess of the 1.20 DCR lenders typically want.
- The internal rate of return (IRR) on equity is low for the first financial scenario (today's difficult markets), but would be considered strong in a more normal market.
- This prototype is able to stand on its own, and the second public loan scenario (Scenario 4) is not needed.

**Table 15. Adaptive re-use of big box retail: financing assumptions and return equity**

Financial Scenario	Bank Loan	Public Assistance Loan	Loan/Value Ratio	Debt Coverage Ratio	Equity Repayment Gap	IRR on Equity
1	65%	-	0.46	1.97	-\$2,862,190	4%
2	80%	-	0.56	1.96	\$369,321	19%
3	65%	7%	0.46	1.97	\$63,408	17%
4	n/a	n/a	n/a	n/a	n/a	n/a

Source: ECONorthwest.

**Development Description**  
 Prototype: Mixed-use mid-rise building  
 Applicable sites: All

Use	Units	Stories	Gross SF	Usable SF	Cost Per SF	Total	TI / SF
Residential	3		60,000	51,000	150	9,000,000	
Ground Floor retail	1		20,000	17,000	115	2,300,000	\$25
Parking	2		44,135	-	70	3,089,450	
<b>TOTAL (w/o parking)</b>	-	6	80,000	68,000		14,389,450	14,889,450

**LAND**  
 size of parcel (acres) 0.6  
 price per acre \$1,700,000  
 Total acquisition cost \$1,020,000

**PARKING**  
 Use Unaccommodated parking spaces:  
 Residential 70 24,500 Min. parking Sq. ft. 11.81  
 Retail 56 19,635 Required square footage for parking 4,135.00  
 Total 126 44,135

**RESIDENTIAL BREAKDOWN**

unit size	units	Total sf	Parking spaces
1 bd	800	33600	42
2 bd	1200	12000	20
3 bd	1500	6000	8
<b>Total</b>	<b>56</b>	<b>51600</b>	<b>70</b>

Retail rates from C.B. Richard Ellis (pulled 9/23/09)

\$18.00	Comparable retail properties for lease
\$10.00	in the South Puget Sound; USD/SF/YR.
\$25.00	
\$14.00	
\$25.00	
\$30.00	
\$20.33	average

Use Zones: TOD Urban, Pond District & Regional Center  
 Scale zone: General Urban, Urban Core  
 Corridor Zone: Urban Corridor  
 Max height: 98 feet (8 stories)  
 Max diagonal: 250' -300' (length of diagonal connecting farthest corners of the footprint)  
 Min Parkings: Residential: 1/bedroom max of 2/du, Office: 3/1,000 ufa, Retail: 3-3/1,000 ufa  
 Footprint: 20,000 sf (about 140 x 140)  
 Diagonal: About 140'  
 Parking lot efficiency: assumes 350 square feet per stall  
 Usable SF: assumes 85% of gross SF

**SOURCES:**  
 building construction costs: Ankrom-Molson Architects; Howard White  
 Constructors, Sept 2009  
 TI estimates: ECONorthwest, Sept 2009  
 land estimates: from Tukwila assessor's database, based on an average price per acre in the Urban Center.

**NOTE:** None of the prototypes meet frontage requirements, due to site size  
 On Urban Corridors: Frontage coverage requirements will probably conflict with building length maximums  
 This pro forma assumes that some parking (about 12 spaces) will be accommodated by variance or in some shared arrangement. Land costs do not include this space.  
 Min. linear frontage coverage: 90%  
 Maximum building length: 120 feet  
 On sites that are 200 x 200, the minimum frontage coverage is 180 feet; but the maximum building length is 120 feet

**Financial Pro Forms**  
**Prototype: mixed-use mid-rise building**

**Assumptions / Building value bottom line**

<b>About the development</b>	
gross sq feet	200,000
ground floor retail	44,135
parking	86,000
<b>TOTAL (w/o parking)</b>	

<b>Development costs</b>	
Site acquisition	\$1,020,000
Development	\$4,085,450
Construction	\$744,473
Soft costs	\$4,166,893
Contingency	\$967,814
Off-site costs	\$0
<b>TOTAL</b>	<b>\$22,088,572</b>

<b>Revenues and expenses</b>	
source of income/expense	annual income
Residential rent	\$1,040,400
Retail rent	\$340,000
total revenue	\$1,380,400
Management fee	\$69,020
<b>TOTAL</b>	<b>\$1,223,034</b>

<b>Other assumptions:</b>	
Operating cost increase	3%
Vacancy, Yr 1	0%
Vacancy, Yr 2	0%
stabilization	5%
Cap rate	5.5%

<b>Bottom line</b>	
Four Year Net Value	\$14,388,640
Costs	(\$7,699,932)

**Scenario 1 (35/65)**

<b>Equity</b>	
Equity required	\$7,731,000
Equity terms	
term (yrs)	35
interest rate	10%
Total equity requirement (balloon payment at end of term)	\$15,013,351

<b>Bank loan</b>	
Bank loan required	\$17,670,857
Bank loan terms	
term (yrs)	35
interest rate	10%
Annual payment	\$1,275,346

<b>Bottom line</b>	
Loan to value ratio	1.00
Debt coverage ratio	0.56
Financing gap	\$0
Equity requirement gap (or surplus)	-\$15,013,073
IRR on equity	-38%

This sheet allows the user to manipulate four development and financing scenarios by changing the variables that are highlighted in red. All scenarios are based on the same program. All scenarios reference the same revenue and cost assumptions, but these assumptions can be changed on this page. The key difference in the scenarios is the structure of the financing.

**Scenario 2 (20/80)**

<b>Equity</b>	
Equity required	\$4,417,714
Equity terms	
term (yrs)	20
interest rate	10%
Total equity requirement (balloon payment at end of term)	\$8,579,058

<b>Bank loan</b>	
Bank loan required	\$17,670,857
Bank loan terms	
term (yrs)	20
interest rate	10%
Annual payment	\$1,283,769

<b>Bottom line</b>	
Loan to value ratio	1.23
Debt coverage ratio	0.95
Financing gap	\$0
Equity requirement gap (or surplus)	-\$8,654,716
IRR on equity	-33%

**Scenario 3 (35/65 with public)**

<b>Equity</b>	
Equity required	\$3,208,857
Equity terms	
term (yrs)	35
interest rate	10%
Total equity requirement (balloon payment at end of term)	\$5,268,627

<b>Bank loan</b>	
Bank loan required	\$14,857,572
Bank loan terms	
term (yrs)	35
interest rate	10%
Annual payment	\$1,275,346

<b>Bottom line</b>	
Loan to value ratio	1.00
Debt coverage ratio	0.96
Financing gap	\$0
Equity requirement gap (or surplus)	-\$5,040,575
IRR on equity	-19%

**Scenario 4 (20/80 with public)**

<b>Equity</b>	
Equity required	\$1,208,857
Equity terms	
term (yrs)	20
interest rate	10%
Total equity requirement (balloon payment at end of term)	\$2,268,627

<b>Bank loan</b>	
Bank loan required	\$17,670,857
Bank loan terms	
term (yrs)	20
interest rate	10%
Annual payment	\$1,283,769

<b>Bottom line</b>	
Loan to value ratio	1.23
Debt coverage ratio	0.95
Financing gap	\$0
Equity requirement gap (or surplus)	-\$4,799,470
IRR on equity	-11%

**Development Description**  
**Prototype: Office tower**  
**Applicable sites: All**

Use	Units	Stories	Gross SF	Usable SF	Cost Per SF	Total	TI / SF
Office	6		135,000	114,750	120	16,200,000	
Ground Floor retail	1		22,000	18,700	115	2,530,000	\$25
Structured Parking	2		70,000	-	70	4,900,000	
<b>TOTAL (w/o parking)</b>	<b>9</b>		<b>157,000</b>	<b>133,450</b>		<b>23,630,000</b>	<b>24,180,000</b>

**LAND**  
 size of parcel (acres) 2  
 price per acre \$1,700,000  
 Total acquisition cost \$3,400,000

**PARKING**

Use	Min parking	Sq ft.
Office	344	120,488
Retail	62	21,599
<b>Total</b>	<b>406</b>	<b>142,086</b>

Unaccommodated parking:  
 206 (spaces)  
 72086 (sq ft)

Use Zones: TOD-Urban, Pond District & Regional Center  
 Scale zone: General Urban, Urban Core  
 Corridor Zone: Urban Corridor  
 Max height: 98 feet (8 stories)  
 Max diagonal: 250' length of diagonal connecting farthest corners of the footprint  
 Min Parking: Office: 3/1,000 ufa, Retail: 3.3/1,000 ufa  
 Footprint: 22,000 sf  
 Diagonal: 210'  
 Parking lot efficiency: assumes 350 square feet per stall (from Gerding Edlen)  
 Usable SF: assumes 85% of gross SF

**SOURCES:**  
 building construction costs: Ankrom Moison Architects; Howard Write Constructors; Sept 2009  
 TI estimates: ECONorthwest, Sept. 2009  
 land estimates: from Tukwila assessor's database, based on an average price per acre in the Urban Center.

Comparable office rents (\$/sf/yr)

17.5
12
15
15
15
14.9

Office rents pulled from C.B. Richard Ellis 9/23/09; comparable units for rent in the South Seattle market.



**Development Description**  
 Prototype: Residential tower  
 Applicable sites: Regional Center zone

Use	Units	Stories	Gross SF	Usable SF	Cost Per SF	Total	TI / SF
Residential	6		138,000	117,300	200	27,600,000	
Ground Floor retail	1		23,000	19,550	125	2,875,000	\$25
Parking	4		80,680	-	70	5,647,618	
<b>TOTAL (w/o parking)</b>	-	11	161,000	136,850		36,122,618	36,697,618

**LAND**  
 size of parcel (acres) 0.5  
 price per acre \$1,700,000  
 Total acquisition cost \$850,000

**PARKING**

Use	Min parking	Sq ft.
Residential	166	58,100
Retail	65	22,580
<b>Total</b>	<b>231</b>	<b>80,680</b>

**RESIDENTIAL BREAKDOWN**

	unit size	units	Total sf	Parking spaces
1 bd	800	60	48000	60
2 bd	1400	35	49000	70
3 bd	1800	18	32400	36
<b>Total</b>		<b>113</b>	<b>129,400</b>	<b>166</b>

NOTE: Can only be in this zone b/c parking requires increased height of building.

Use Zones: TOD Urban, Pond District & Regional Center  
 Scale zone: General Urban, Urban Core  
 Corridor Zone: Urban Corridor  
 Max height: 142 feet (12 stories)  
 Max diagonal: 250' length of diagonal connecting farthest corners of the footprint  
 Min Parking: Office: 3/1,000 ufa, Retail: 3.3/1,000 ufa, Residential: 1/bd with 2/du max  
 Footprint: 23,000 sf  
 Diagonal: 210'  
 Parking lot efficiency: assumes 350 square feet per stall  
 Usable SF: assumes 85% of gross SF

**SOURCES:**  
 building construction costs: Ankrum Moison Architects; Howard Write Constructors, Sept 2009  
 TI estimates: ECONorthwest, Sept 2009  
 land estimates: from: Tukwila assessor's database, based on an average price per acre in the Urban Center.

**NOTE:**  
 On Urban Corridors: Frontage coverage requirements will probably conflict with Building length maximums

Min linear frontage coverage: 90%  
 Maximum building length: 120 feet

On sites that are 200 x 200, the minimum frontage coverage is 180 feet, but the maximum building length is 120 feet

Frontage requirements are usually based on a linear percentage of the total building facade, rather than a percentage of the length of the site

**Financial Pro Forma**  
Prototype Residential tower

**Assumptions / Building value bottom line**

<b>About the development</b>	
square feet	138,000
Units	23,000
Ground floor retail	80,680
Surface parking	161,000
<b>TOTAL (w/o parking)</b>	
<b>Development costs</b>	
Item	\$
Site acquisition	\$850,000
New construction	\$96,697,618
Developer fee	\$1,026,881
Soft costs	\$11,008,285
% of construction	
Contingency	\$2,885,245
(10% of total)	\$52,777,129
<b>TOTAL</b>	

<b>Revenues and expenses</b>		
Source of income/expense	\$/CF assumption	annual income
Rent (per month)		\$2,292,920
Retail rent (per year)		\$391,000
<b>Total revenue</b>		\$2,683,920
Management fee (% of revenue)		\$139,196
<b>STABILIZED NOI</b>		\$2,466,553

<b>Other assumptions</b>	
Rent increase per year	3%
Operating cost increase	3%
Vacancy, Yr 1	20%
Vacancy, Yr 2	10%
Vacancy, Yr 3 and stabilization	5%
Cap rate	5.0%

<b>Bottom line</b>	
Fair Market Value	\$30,831,914
Costal Value (FMV - (\$21,945,215))	

**Scenario 1 (35/65)**

<b>Equity</b>	
Equity required	\$18,471,995
Equity terms	
Term (Yrs)	30
Interest rate	5%
Total equity repayment (balloon payment at end of term)	\$35,872,014
<b>Bank loan</b>	
Bank loan required	\$34,205,124
Bank loan terms:	
term (Yrs)	30
Interest rate	5%
Annual payment	\$3,047,227

<b>Bottom line</b>	
Loan to value ratio	1.11
Debt coverage ratio	0.81
Financing gap	\$0
Equity repayment gap (or surplus)	-\$39,232,026
IRR on equity	#NUM!

This sheet allows the user to manipulate four development and financing scenarios by changing the variables that are highlighted in BLUE. All scenarios reference the same development program. All scenarios reference the same assumptions can be changed on this page. The key differences in the scenarios is the structure of the financing.

**Scenario 2 (20/80)**

<b>Equity</b>	
Equity required	\$10,535,426
Equity terms	
Term (Yrs)	30
Interest rate	5%
Total equity repayment (balloon payment at end of term)	\$20,489,294
<b>Bank loan</b>	
Bank loan required	\$44,221,703
Bank loan terms:	
term (Yrs)	30
Interest rate	5%
Annual payment	\$3,067,361

<b>Bottom line</b>	
Loan to value ratio	1.37
Debt coverage ratio	0.80
Financing gap	\$0
Equity repayment gap (or surplus)	-\$23,999,172
IRR on equity	#NUM!

**Scenario 3 (35/65 with public)**

<b>Equity</b>	
Equity required	\$5,277,713
Equity terms	
Term (Yrs)	30
Interest rate	5%
Total equity repayment (balloon payment at end of term)	\$12,588,546
<b>Bank loan</b>	
Bank loan required	\$34,205,124
Bank loan terms:	
term (Yrs)	30
Interest rate	5%
Annual payment	\$3,047,227

<b>Bottom line</b>	
Loan to value ratio	1.11
Debt coverage ratio	0.81
Financing gap	\$0
Equity repayment gap (or surplus)	-\$17,066,214
IRR on equity	#DIV/0!

**Scenario 4 (20/80 with public)**

<b>Equity</b>	
Equity required	\$5,277,713
Equity terms	
Term (Yrs)	30
Interest rate	5%
Total equity repayment (balloon payment at end of term)	\$12,588,546
<b>Bank loan</b>	
Bank loan required	\$42,221,703
Bank loan terms:	
term (Yrs)	30
Interest rate	5%
Annual payment	\$3,233,230

<b>Bottom line</b>	
Loan to value ratio	1.37
Debt coverage ratio	0.76
Financing gap	\$0
Equity repayment gap (or surplus)	-\$15,154,488
IRR on equity	#DIV/0!

**Development Description**  
 Prototype: Adaptive re-use of big box retail  
 Applicable sites: Pond District

Use	Units	Stories	Gross SF	Usable SF	Cost Per SF	Total	TI / SF
Office	1	1	40,000	34,000	95	3,800,000	\$25
Retail	1	1	40,000	34,000	30	1,200,000	\$25
Brew pub	1	1	10,000	8,500	40	400,000	\$25
Covered Parking	163	-	30,000	-	20	600,000	
<b>TOTAL (w/o parking)</b>	<b>164</b>	<b>2</b>	<b>90,000</b>	<b>76,500</b>		<b>6,000,000</b>	<b>7,912,500</b>

**LAND**  
 size of parcel (acres) 2.3  
 price per acre \$1,700,000  
 Total acquisition cost \$3,910,000

Spaces in surface lots  
 77,485/143  
 square footage of surface lots:  
 27,120

**PARKING**

Use	Min parking	Sq. ft.
Brew pub	51	17,850
Retail	112	39,270
Office	102	35,700
<b>Total</b>	<b>163</b>	<b>57,120</b>

Use Zones: Pond District  
 Scale zone: General Urban; Urban Core  
 Corridor Zone: Urban Corridor  
 Max height: 98 feet (8 stories)  
 Min height: 2-stories & 2.5-feet [does not say whether 2nd floor has to be active]  
 Max diagonal: does not apply to buildings less than 58'  
 Min Parking: Restaurant: 6/1,000 ufa, Residential: 1/bedroom max of 2/du, Office: 3/1,000 ufa, Retail: 3.3/1,000 ufa  
 Footprint: 100,000 (assumes one-story big box)  
 Diagonal: n/a  
 Parking lot efficiency: assumes 350 square feet per stall  
 Usable\_SF: assumes 85% of gross\_SF

**Assumptions / Building value bottom line**

**About the development**

Recall	40,000
Amount	30,000
Surplus pending	50,000
<b>TOTAL (w/o parking)</b>	

**Development costs**

Item	\$/sq ft	\$/sq ft
Site acquisition	\$2,310,000	
Raw construction	\$7,712,500	
Dev. construction	\$395,625	
Soft costs (as % of construction)	\$2,373,750	
Contingency (as % of construction)	\$314,313	
Cost w/ rent & hard costs (as % of construction)	\$0	
Off-sites (as % of construction)	\$11,196,188	
<b>TOTAL</b>		

**Revenues and expenses**

source of	\$/SF	\$/SF
Income/expense	\$/SF	\$/SF
Brew pub rent (per year)	\$144,500	
Office rent (per year)	\$680,000	
Office rent (per year)	\$612,000	
Office rent (per year)	\$1,456,500	
Management fee (% of revenues)	\$71,825	
<b>STABILIZED NOI</b>	\$4,272,739	

**Other assumptions**

Item	Value
Operating cost increase	3%
Vacancy, Yr 1	5%
Vacancy, Yr 2	10%
Vacancy, Yr 3 and thereafter	15%
Cap rate	10.7%

**Bottom line**

Fair Market Value	\$15,909,238
Created value (FMV - costs)	\$4,713,050

**Scenario 1 (35/65)**

**Equity**

Equity required	\$3,918,666
Equity term	10 yrs
Interest rate	7%
Total equity repayment (balloon payment at end of term)	\$7,609,921

**Bank loan**

Bank loan required	\$7,277,522
Bank loan term	10 yrs
Interest rate	7%
Annual payment	\$646,444

**Bottom line**

Loan to value ratio	0.46
Debt coverage ratio	1.97
Financing gap	\$0
Equity repayment gap (or surplus)	-\$2,862,190
IRR on equity	4%

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**Scenario 2 (20/80)**

**Equity**

Equity required	\$2,220,238
Equity term	10 yrs
Interest rate	7%
Total equity repayment (balloon payment at end of term)	\$4,246,526

**Bank loan**

Bank loan required	\$6,956,990
Bank loan term	10 yrs
Interest rate	7%
Annual payment	\$650,713

**Bottom line**

Loan to value ratio	0.56
Debt coverage ratio	1.96
Financing gap	\$0
Equity repayment gap (or surplus)	\$369,121
IRR on equity	19%

**Scenario 3 (35/65 with public)**

**Equity**

Equity required	\$3,134,933
Equity term	10 yrs
Interest rate	7%
Total equity repayment (balloon payment at end of term)	\$7,477,527

**Bank loan**

Bank loan required	\$7,277,522
Bank loan term	10 yrs
Interest rate	7%
Annual payment	\$646,444

**Second loan**

Required loan amount	\$783,733
Second loan term	10 yrs
Interest rate	7%
Annual payment (interest only payments for 10 yrs)	\$30,368

**Bottom line**

Loan to value ratio	0.46
Debt coverage ratio	1.97
Financing gap	\$0
Equity repayment gap (or surplus)	\$63,408
IRR on equity	17%

**Scenario 4 (20/80 with public)**

**Equity**

Equity required	\$2,220,238
Equity term	10 yrs
Interest rate	7%
Total equity repayment (balloon payment at end of term)	\$4,246,526

**Bank loan**

Bank loan required	\$6,956,990
Bank loan term	10 yrs
Interest rate	7%
Annual payment	\$650,713

**Second loan**

Required loan amount	\$783,733
Second loan term	10 yrs
Interest rate	7%
Annual payment (interest only payments for 10 yrs)	\$30,368

**Bottom line**

Loan to value ratio	0.56
Debt coverage ratio	1.96
Financing gap	\$0
Equity repayment gap (or surplus)	\$2,465,211
IRR on equity	44%