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IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON  
DIVISION I

BRICKLIN NEWMAN DOLD, LLP

Court of Appeals No. 66874-9-I

RENTON NEIGHBORS FOR HEALTHY GROWTH,

Appellant,

v.

PACLAND; JEFF CHAMBERS, P.E.; BONNELL FAMILY, LLC;  
PETER BONNELL; CITY OF RENTON,

Respondents,

and

WAL-MART STORES, INC.,

Intervenor-Respondent.

On Petition for Writ of Certiorari to the King County Superior Court  
Seattle, Washington

RENTON'S BRIEF IN OPPOSITION

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1. **Identity of Respondent.**

Respondent City of Renton (hereinafter “Renton”) asks the Court of Appeals to deny the Renton Neighbors for Healthy Growth (RNHG) appeal of the Superior Court’s decision to deny their petition, and Renton’s final decision to permit Wal-Mart to modestly expand their Renton store.

2. **Respondent Renton’s Request.**

Renton requests that the Court of Appeals affirm the decisions below which concluded that the Renton Municipal Code (RMC) permits the existing Renton Wal-Mart to be modernized and permits it to remain more than 15 feet from the street.

3. **Issues Presented for Review.**

Whether RNHG has proven that the Hearing Examiner erred in finding that the proposed remodel of Renton Wal-Mart did not violate RCW 36.70C.130?

4. **Statement of Facts.**

RNHG appeals the Superior Court decision and the underlying Renton City Council’s land use decision to adopt the Renton Planning and Development (P&D) Committee recommendation, and which approved the modest Wal-Mart’s expansion. RNHG appealed despite never participating in the April 27, 2010, public hearing.<sup>1</sup> RNHG claims that under RMC 4-10-050(A) and RMC 4-3-100, Wal-Mart cannot enlarge its roughly 142,000 square-foot sixteen-year-old store an additional 16,000 square feet, or roughly 9%.<sup>2</sup> During the two-hour public hearing (that RNHG failed to attend)

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1 *CP*, p. 1292 (June 10, 2010, Hearing Examiner letter regarding the Request for Reconsideration).

2 RNHG’s *Opening Brief of Appellant*, June 22, 2011, (hereinafter *Appendix A*, p. 4 l. 4).

every community comment, letter and petition supported the Renton Wal-Mart expansion project.<sup>3</sup>

On May 13, 2010, the Hearing Examiner issued an extensive written decision approving the Wal-Mart Site Plan proposal to modernize the existing store, subject to a number of conditions.<sup>4</sup> On May 27, 2010, RNHG appeared for the first time and requested that the Hearing Examiner reconsider his May 13, 2010 decision.<sup>5</sup> The Hearing Examiner considered their request, and in a denial letter explained why “there is no reason to alter the original decision nor the conditions attached to that decision.”<sup>6</sup> The Renton City Council affirmed and adopted the Hearing Examiner’s decision.<sup>7</sup> RNHG then appealed to Superior Court, and the Superior Court affirmed the City Council and Hearing Examiner decisions.<sup>8</sup>

5. Argument.

RNHG claims that RMC 4-10-050 prohibits Wal-Mart from modernizing the Renton Wal-Mart and that the design guidelines of RMC 4-3-100 were not satisfied. The Hearing Examiner and later the Renton Planning & Development (P&D) Committee considered and rejected

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3 CP, p. 1074-1143 (Community Letters and Petition in support of the Wal-Mart expansion). See also, CP p. 1292 (“At the public hearing there was no testimony in opposition to the request and no one asked any neutral questions. It would appear that opposition to the application is newly minted in this request. The public hearing was legally convened. There is no allegation that legal notice was deficient.”); and CP p. 1045 (*Notice of Environmental Determination and Public Hearing*); and CP p. 1055 (*State of Washington, County of King Affidavit of Publication*).

4 See CP, p. 1265-1289 (May 13, 2010, *Minutes; Findings, Conclusions & Recommendation; Conclusions; and Decision*).

5 CP, p. 924 (May 27, 2010, RNHG Letter regarding Wal-Mart Expansion Site Plan Approval).

6 CP, p. 1292-1294.

7 See CP, p. 695-699 (August 16, 2010, *P&D Committee Committee Report with City Council Approval*).

8 See CP, 170 (*Superior Court Final Order and Judgment*).

RNHG's arguments. Both concluded that the Wal-Mart expansion proposal satisfied the intent of RMC Title 4 and its design guidelines.

**A. RNHG Lacks Standing to Appeal.**

This Court should never reach the merits of RNHG's claims because RNHG failed to participate in the initial administrative hearing before the Hearing Examiner. In response to the request for reconsideration, the Hearing Examiner recalled that during "the public hearing there was no testimony in opposition to the request and no one asked any neutral questions. It would appear that opposition to the application is newly minted in this request."<sup>9</sup> RNHG has failed to exhaust the available administrative remedies. Its appeal must be denied as a matter of law.

This matter is governed by RCW 36.70C, the Land Use Petition Act (LUPA). Before a party has standing to challenge a land use decision, RCW 36.70C.060(2) requires that "(a) [t]he land use decision has prejudiced or is likely to prejudice that person; (b) [t]hat person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision; (c) [a] judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and (d) [t]he petitioner has exhausted his or her administrative remedies to the extent required by law."

Renton argues that RNHG failed to exhaust its administrative remedies as required by RCW 36.70C.060(2)(d). In **Citizens for Mount Vernon v. City of Mount Vernon**, the Washington State Supreme Court

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<sup>9</sup> CP, p. 1074-1143. See also, CP, p. 1292.

explained that “[t]he doctrine of exhaustion of administrative remedies is well established in Washington.<sup>10</sup> A party must generally exhaust **all** available administrative remedies prior to seeking relief in superior court.”<sup>11</sup> (Emphasis added). There are several compelling principles that justify this requirement. The Washington State Supreme Court in **South Hollywood Hills Citizens Ass’n v. King County** stated that this “principle is founded upon the belief that the judiciary should give proper deference to that body possessing expertise in areas outside the conventional expertise of judges.<sup>12</sup> One of the decisions that the Court relied on was the United States Supreme Court decision in **McKart v. United States**.<sup>13</sup>

The High Court in **McKart** elucidated that the policies underlying this principle were: (1) “avoidance of premature interruption of the administrative process;” (2) permitting the agency to “develop the necessary factual background upon which decisions should be based;” (3) “since agency decisions are frequently of a discretionary nature or frequently require expertise, the agency should be given the first chance to exercise that discretion or to apply that expertise;” (4) uninterrupted administrative processes are more efficient; (5) “notions of administrative autonomy require that the agency be given a chance to discover and correct its own errors;” and (6) “[f]inally, it is possible that frequent and deliberate flouting of

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<sup>10</sup> **Citizens for Mount Vernon v. City of Mount Vernon**, 133 Wn.2d 861, 866; 947 P.2d 1208 (1997).

<sup>11</sup> **South Hollywood Hills Citizens Ass’n v. King County**, 101 Wn.2d 68, 73; 677 P.2d 114 (1984) (quoting **State v. Tacoma-Pierce County Multiple Listing Serv.**, 95 Wn.2d 280, 284; 622 P.2d 1190 (1980)).

<sup>12</sup> **Citizens for Mount Vernon**, 133 Wn.2d at 866; *citing* RCW 34.05.534 and **Simpson Tacoma Kraft Co. v. Department of Ecology**, 119 Wn.2d 640, 646; 835 P.2d 1030 (1992).

<sup>13</sup> **McKart v. United States**, 395 U.S. 185; 89 S. Ct. 1657; 23 L. Ed. 2d 194 (1969).

administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures.”<sup>14</sup> The Washington State Supreme Court added that “even decisions made with the utmost care might be reversed on heretofore undisclosed grounds, administrative agencies could become careless in their decisionmaking [sic].”<sup>15</sup>

Addressing the first factor, in the instant matter, RNHG almost did the opposite of prematurely interrupting the administrative process. RNHG did not participate in the actual administrative hearing. In fact, it appears that RNHG did not even attend the public hearing. “There was no opposition from the public regarding the subject proposal.”<sup>16</sup> As a result, it is fair to conclude that a failure to fully participate in the process before appealing is a failure to exhaust all administrative remedies and represents an unreasonable interruption of the administrative process.

Addressing the second factor, there is little to no factual background for RNHG’s claims because RNHG did not participate in the administrative hearing. A full and complete public hearing was held without RNHG. None of the citizens who participated by appearing and speaking or by signing petitions were ever challenged by RNHG or given an opportunity to challenge or rebut RNHG’s claims.

Addressing the third factor, because RNHG never participated in the administrative hearing, and because there was no opposition to the project, the Hearing Examiner had no reason or opportunity to address, distinguish,

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14 **McKart**, 395 U.S. at 193-95; **South Hollywood Hills Citizens**, 101 Wn.2d at 73-74.

15 **King County v. Washington State Boundary Review Board for King County**, 122 Wn.2d 648, 670; 860 P.2d 1024 (1993).

16 *CP*, p. 1269, no. 5.

make accommodations for or make a record concerning RNHG's claims before exercising his discretion and rendering his decision. In other words, the Hearing Examiner never directly addressed RNHG's claims before issuing a decision because RNHG did not appear at the public hearing.

Addressing the fourth factor, while RNHG may not have interrupted the administrative process with a premature challenge, it has now significantly interrupted the process by offering its claim late, after the actual hearing. The Court in **McKart** warned that "judicial review may be hindered by the failure of the litigant to allow the agency to make a factual record, or to exercise its discretion or apply its expertise."<sup>17</sup> This has happened here, making the administrative and judicial processes inefficient and wasteful.

Addressing the fifth factor, while this factor is most likely intended to address premature appeals rather than late participation, asking to change the record and findings with untimely arguments in the administrative process is unfair to the Hearing Examiner, the community and those who took the time to attend or participate in the hearing. Additionally, the Hearing Examiner's decision was based on the record of the public hearing. RNHG's unassigned claims of error are untimely.

Addressing the sixth factor, permitting RNHG to skip participation in the public hearing but still appeal violates the rules adopted by the legislature, weakens Renton's ability to require people to completely exhaust the administrative process before resorting to the courts, and the administrative law requirements would become severely weakened if not

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<sup>17</sup> **McKart**, 395 U.S. at 194.

meaningless. What would be the purpose of requiring attendance at an administrative hearing if a party, like RNHG, can choose not to participate in the hearing but still appeal a result that it does not like? That is what RNHG has done. RNHG wants the court to ignore or change the law. Courts “do not possess the power to amend zoning ordinances.”<sup>18</sup>

The test for whether the exhaustion doctrine is applicable is whether there is a “governmental interest compelling enough to outweigh the severe burden placed on” Appellant.<sup>19</sup> Even if there is no such compelling interest, the court must ask whether when RNHG’s case is viewed in isolation, allowing all similarly situated appellants to bypass administrative procedures would seriously impair a city’s ability to perform its functions.<sup>20</sup>

In the instant matter, Renton’s interests are compelling, and they outweigh Appellant’s burden, which is not severe. Most the factors noted by the Supreme Court in **McKart, supra**, are compelling interests that outweigh RNHG’s burden to fully, completely, and timely participate in the administrative process. RNHG’s burden is not similar to the burden on the appellant in **McKart**, a criminal defendant. RNHG is not charged with a crime, and there is no risk of jail or deprivation of any constitutional rights.

Permitting a party to appeal after bypassing the administrative hearing would subject cities to appeals with a bare record, as Renton is in this case. Bypassing administrative hearings would seriously impair a city like

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18 **Phoenix Development, Inc., v. City of Woodinville**, 171 Wn.2d 820, 830; 2011 Wash. LEXIS 434 (2011); *citing* **Open Door Baptist Church v. Clark County**, 140 Wn.2d 143, 161, 170; 995 P.2d 33 (2000).

19 **McKart**, 395 U.S. at 197.

20 **McKart**, 395 U.S. at 197; **South Hollywood Hills Citizens**, 101 Wn.2d at 73-74.

Renton and its ability to address community and economic development, land use, and permit evaluations in an efficient and meaningful manner. Finally, unlike the possible criminal sanctions in **McKart**, the only possible sanctions that RNHG is subject to are court costs and attorneys' fees.

Finally, in addressing RCW 36.70C.060(2)(a)-(c), RNHG has not shown a particularized prejudice as required in RCW 36.70C.060(2)(a); beyond ambiguous claims that a couple of people shop or visit the area, RNHG has not proven that its interests are among those that Renton was required to consider when it made the land use decision as required by RCW 36.70C.060(2)(b); and a judgment in RNHG's favor would not satisfy RCW 36.70C.060(2)(c) because it would not substantially eliminate or redress the alleged prejudice as the current structure is nonconforming. The most likely outcome if RNHG prevails is for the current nonconforming structure to remain a nonconforming structure with minor or no improvements at all.

**B. Standards of Review.**

Under RCW 36.70C.140 a "court may affirm or reverse the land use decision under review or remand it for modification or further proceedings." A land use decision under RCW 36.70C.020 is the "final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals." Renton's final land use decision-maker is the Renton City Council.

RCW 36.70C.130(1) provides the standards for granting relief under LUPA. Review is limited to the record before the City Council.<sup>21</sup> Under RCW 36.70C.130(1)(a) – (d) RNHG must prove that:

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

RCW 36.70C.130(1)(a), (b) and (d) present questions of law that the Court reviews de novo.<sup>22</sup> RCW 36.70C.130(1)(a) “requires proper process unless the ‘error was harmless.’ Harmless error is one that is ‘not prejudicial to the substantial rights of the party assigning error,’ and does not affect the outcome of the case.”<sup>23</sup>

In its Superior Court land use petition, RNHG disagreed with the decision and its reasoning, but never claimed that the hearing process violated RCW 36.70C.130(1)(a).<sup>24</sup> “Under LUPA, procedural errors do not merit invalidation of challenged actions if they are ‘harmless.’<sup>25</sup> And petitioners have the burden of demonstrating that unlawful procedures were

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21 See **Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.**, 151 Wn.2d 279, 288; 87 P.3d 1176 (2004); citing **Isle Verde Int'l Holdings v. City of Camas**, 146 Wn.2d 740, 751; 49 P.3d 867 (2002).

22 **Phoenix Development, Inc.**, 171 Wn.2d at 828.

23 **Young v. Pierce County**, 120 Wn. App. 175, 188; 84 P.3d 927 (Div. II, 2004); citing RCW 36.70C.130 (1)(a).

24 See CP, p. 1 (*Land Use Petition*), and p. 1292-1294.

25 RCW 36.70C.130(1)(a).

prejudicial and not harmless.”<sup>26</sup> Because RNHG never claimed that the hearing process violated RCW 36.70C.130(1)(a), RNHG cannot rely on 36.70C.130(1)(a) to challenge the proposed Wal-Mart expansion decision.

RCW 36.70C.130(1)(b) requires that RNHG “show that the City Council ‘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.’”<sup>27</sup> RCW 36.70C.130(1)(c) “concerns a factual determination that this court reviews for substantial evidence.”<sup>28</sup> “Substantial evidence is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”<sup>29</sup>

RCW 36.70C.130(1)(d) requires that RNHG prove the “‘decision is a clearly erroneous application of the law to the facts.’”<sup>30</sup> “Under the ‘clearly erroneous application’ test, the Court may only overturn the land use decision if it has a “‘definite and firm conviction that the decision maker committed a mistake.’”<sup>31</sup> Evidence must be viewed in the light most favorable to “‘the party who prevailed in the highest forum that exercised fact-finding authority, a process that necessarily entails acceptance of the fact

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26 See Thornton Creek Legal Defense Fund v. City of Seattle, 113 Wn. App. 34; 52 P.3d 522 (2002); Moss v. City of Bellingham, 109 Wn. App. 6; 31 P.3d 703 (2001).

27 See Pinecrest Homeowners Ass'n, 151 Wn.2d at 293; citing RCW 36.70C.130 (1)(b).

28 Cingular Wireless v. Thurston County, 131 Wn. App. 756, 768; 129 P.3d 300 (Div. II, 2006).

29 City of University Place v. McGuire, 144 Wn.2d 640, 647; 30 P.3d 453 (2001); citing City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 46; 959 P.2d 1091 (1998) (quoting Callegod v. Wash. State Patrol, 84 Wn. App. 663, 673; 929 P.2d 510 (1997)); see also Phoenix Development, Inc., 171 Wn.2d at 828, and Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169; 176; 4 P.3d 123 (2000).

30 City of University Place, 144 Wn.2d at 648.

31 Chinn v. City of Spokane, 157 Wn. App. 294, 298; 236 P.3d 245 (Div. II, 2010).

finder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences.”<sup>32</sup>

Viewing the evidence in a light most favorable to Renton, and after granting deference to the Renton City Council's expertise in understanding and implementing the intent of the RMC, and accepting the weight given by the City Council to competing inferences and considerations, RNHG has failed to prove “an erroneous interpretation of the law,” that the Hearing Examiner did not base his decision on “substantial evidence,” or that there was a “clearly erroneous application of the law to the facts.”<sup>33</sup>

**C. The RMC permits Renton to waive the 15-foot maximum setback and to permit the pre-existing Wal-Mart to modestly expand.**

RNHG claims that RMC 4-10-050 prohibits Wal-Mart's expansion – end of story. RNHG relies on RMC 4-10-050 to claim that Title 4 “forbids enlarging a non-conforming structure”<sup>34</sup> and that Wal-Mart's proposed “enlargement is non-conforming because it violates the City's maximum frontage setback requirement of 15 feet and because it violates several design requirements in District D.”<sup>35</sup> RNHG's rigid interpretation of the RMC is inconsistent with the intent of the RMC generally and Title 4 specifically. The Superior Court, the City Council, the P&D Committee and the Hearing Examiner, found that the proposal met the intent of the RMC.<sup>36</sup>

RMC 4-10-050(A)(4) states that structures “shall not be enlarged unless the enlargement is conforming.” The proposed enlargement in fact

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32 **City of University Place**, 144 Wn.2d at 652.

33 **City of University Place**, 144 Wn.2d at 648.

34 *See Appendix A*, p. 1, 9, 12-15, and 18.

35 *See Appendix A*, p. 13-14, and 19-27.

36 *CP*, p. 171 l. 1-4; p. 166 l. 9-22; p. 695-699; and page 1267 and p. 1280 section 1.

increases conformity.<sup>37</sup> When considered in conjunction with the conditions imposed by the Hearing Examiner, the enlargement conforms to the requirements and meets the intent of the RMC. As a result, the Hearing Examiner and the Renton City Council declined to prohibit the expansion due to the RMC 4-2-120(A) 15-foot maximum setback limitation.

During the April 27, 2010 public hearing, all interested parties and the public, other than RNHG, offered evidence and opinions about the expansion.<sup>38</sup> During the hearing the Hearing Examiner learned that “[i]t is a tight sight, given the size of the store and the configuration of the roads and then the other uses there that [sic] and the Bonnell family ownership.”<sup>39</sup> “And one time we were looking at a much larger, more significant extension – maybe involving a parking garage, this sort of thing; couldn’t really make it work in a way that made sense on the site, given an existing parking layout and such and so what you see today what we think is kind of the right sized approach to finding a way to expand the store, to update elevations, to bring a broader product mix to the store, and to provide something that updates this store with respect to the City’s design guidelines.”<sup>40</sup>

After considering the evidence, witness credibility, RMC Title 4, and policy considerations, the Hearing Examiner found that an expansion “cannot be expected to accomplish the maximum front yard setback of 15 feet;” that “[o]nly an *incredibly large expansion* or *complete rebuild*

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37 CP, p. 1266.

38 See CP, p. 123-150 (partial transcription of the April 27, 2010 public hearing before the Hearing Examiner).

39 CP, p. 141 l. 8-9.

40 CP, p. 141 l. 10 - 15.

could move the front of the store to the street and parking to the rear;” that the choice between “allowing a reasonably well-designed expansion and revitalized store or” denying the proposal “weighs in favor of the excessive set-back;” that “attempting to meet the newer standards would remove the larger, mature specimen trees;” that “[t]he excessive setback, while non-conforming as to the Zoning Code, actually helps the transition between a rather large big box store and its neighboring uses;” and that property values should be preserved or enhanced by the redevelopment (emphasis added).<sup>41</sup>

The Hearing Examiner also found that the proposal met the intent of the RMC. The Hearing Examiner declined to follow RNHG’s narrow and inflexible interpretation of the design regulations and enlargement code.<sup>42</sup> In his June 10, 2010 letter, the Hearing Examiner responded to RNHG’s claims by quoting RMC 4-3-100(D), which states that the Reviewing Official “will consider the 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 regulation.”<sup>43</sup> (Underline in original).

In that response, the Hearing Examiner clarified for RNHG that RMC 4-3-100(B)(1)(a)(v) provides that RMC 4-10-050 “shall be required to comply with the provisions of” RMC 4-3-100” and that RMC 4-3-100(B)(1)(b) provides that “Big box retail ... shall also be required to comply with the provisions of this section.” Thus, the Hearing Examiner found that

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41 CP, p. 1280-1281, sections 2 – 4, and 6.

42 See CP, p. 1292-1294.

43 CP, p. 1293.

language of RMC 4-3-100 trumps the language of RMC 4-10-050, when he wrote “[s]o, not only is the redevelopment of non-conforming uses permitted under these regulations but they, in the language of the code, “shall be required to comply with the provisions of this Section.”<sup>44</sup>

RNHG attempted to usurp the Renton City Council’s function by making a value judgment in its Request for Reconsideration, that there “is not adequate justification for granting a developer an exception from the City Code requirements, and that the legislative body must make the “policy call” not the Hearing Examiner.”<sup>45</sup> Interestingly, the legislative body granted the Hearing Examiner discretion to interpret and apply the RMC, and more importantly here, the legislative body agreed with the Hearing Examiner’s exercise of discretion permitting the expansion.<sup>46</sup>

The P&D Committee specifically considered RNHG’s RMC 4-2-120(A) 15-foot maximum setback requirement argument and the policy considerations during the appeal hearing. After listening to the parties, the P&D Committee chose to permit the proposed expansion.<sup>47</sup> Councilwoman Briere and Councilman Parker had the following exchange:

Briere: Well, you understand that the setback is an existing issue.

Parker: That’s right – I mean, it’s there.

Briere: Right. The only way they could get by that would be to tear the building down and redevelop-

Parker: Right

Briere: - the entire parcel.

Parker: Yeah, quite frankly which isn’t even reasonable in [my] estimation. I think they have given us a satisfactory

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<sup>44</sup> See CP, p. 1293-1294.

<sup>45</sup> CP, p. 74.

<sup>46</sup> See CP, p. 152-167(Renton P&D Committee hearing transcript).

<sup>47</sup> See CP, p. 152-167.

explanation of how that's interlinked with the design guidelines in order to make that happen. That's all I have. I don't have any problems.<sup>48</sup>

“When construing an ordinance, a ‘reviewing court gives considerable deference to the construction of’ the challenged ordinance ‘by those officials charged with its enforcement.’”<sup>49</sup> The reviewing court does **not** weigh the evidence or substitute its judgment for the City’s judgment.<sup>50</sup> Based on the record, the parties’ arguments, credibility, and RMC, the P&D Committee and the City Council concluded that RNHG’s 15-foot maximum setback arguments were inconsistent with the intent of Title 4.<sup>51</sup> The committee and later the City Council agreed that rigid application RMC 4-10-050 does not meet the intent of Title 4.

**1. Rigid application of Title 4 is not required.**

RMC Title 4’s mission statement declares that Renton is dedicated to “[p]roviding a healthy atmosphere in which to live and raise families, encourage responsible growth and economic vitality, and create a positive work environment.”<sup>52</sup> Wal-Mart rests in a Commercial Arterial Zone.<sup>53</sup> RMC 4-2-020(L) states:

The purpose of the Commercial Arterial Zone (CA) is to evolve from “strip commercial” linear business districts to business areas characterized by enhanced site planning and pedestrian orientation, incorporating efficient parking lot design, coordinated access, amenities and boulevard treatment with greater densities. The CA Zone provides for a

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48 *CP*, p. 166 l. 9-17.

49 **Phoenix Development, Inc.**, 171 Wn.2d at 830; *citing* **Ford Motor Co. v. City of Seattle**, 160 Wn.2d 32, 42; 156 P.3d 185 (2007).

50 **Phoenix Development, Inc.**, 171 Wn.2d at 832.

51 *CP*, p. 166 l. 19 – p. 167 l. 2.

52 *See CP*, p. 1074-1143.

53 *See Appendix B* (a copy of RMC 4-2-080F, entitled *Automall*, and a map showing Wal-Mart as part of the Commercial Arterial Zone).

wide variety of retail sales, services, and other commercial activities along high-volume traffic corridors... The zone includes the designated Auto mall District.

As depicted in the two maps in *Appendix B*, everything near Wal-Mart, along Rainier Avenue/SR 167 and SW Grady Way, which is just north of I-405, is designated Commercial Arterial. Just south of Wal-Mart, the large structure on the left side of the map is a Honda dealership, which parks cars on each side of its structure. Just south of Honda, across SW Grady Way, is a Ford dealership which parks cars on each side. Across Rainier Avenue/SR 167 from the Ford dealership is a restaurant and a Holiday Inn, with parking on each side. Immediately across Rainier Ave/SR 167 from Wal-Mart and north of SW Grady Way is a vacant car dealership. Immediately to the southeast of Wal-Mart, and sharing the same parking lot, are retail businesses in a structure that faces the Wal-Mart parking lot. And between Wal-Mart and Rainier Avenue/SR 167, and to the immediate north east of the business structure, is a gas station.

The maps show that an expansion of Wal-Mart to Rainier Avenue/SR 167 would choke off access to the small businesses to the southeast of Wal-Mart, and would eliminate virtually all of the parking currently used by Wal-Mart patrons. The maps also show that, contrary to RNHG's claims, the immediate area does not cater to pedestrian traffic. Generally, "big box" stores are for people buying in bulk or large items. Few people try to walk home with those items. RNHG does not claim otherwise.

The City Council, by adopting the Hearing Examiner's decision, determined that the proposed project met RMC 4-2-020(L)'s objectives.

Specifically, they expect for the proposal to “preserve or enhance overall property values;”<sup>54</sup> improve the employee work environment; add economic vitality and a healthier atmosphere for Renton residents; and enhance pedestrian orientation by using efficient parking lot design that allows better and safer access for pedestrians.<sup>55</sup> To accomplish these objectives, the City Council through the RMC gave the Hearing Examiner/Reviewing Official the authority to resolve conflicts and to interpret Title 4.

**a. The Reviewing Official may interpret Title 4.**

Under RMC 4-3-050(D)(1)(d), the Reviewing Official is generally the decision-maker authorized to grant permit approval for an activity. In Renton, the Reviewing Official in land use matters is the Hearing Examiner.<sup>56</sup> The City Council, unless otherwise specified, “shall be presumed to have adopted the Examiner’s findings and conclusion.”<sup>57</sup>

According to RMC 4-9-200(E), site plan and master plan criteria are only frames of reference for the Reviewing Official, and “are not intended to discourage creativity and innovation.” Additionally, RMC 4-4-130(D) provides that the Reviewing Official may require measures to meet the purpose of the Code. The Code provides numerous examples of the Reviewing Official’s broad discretion, including:

- RMC 4-2-010(A), if “the proposed developments are consistent with the purpose of the zone and the purpose and intent of the land use designations and guiding policies of the Comprehensive Plan;”

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<sup>54</sup> *CP*, p. 1281, section 6.

<sup>55</sup> *CP*, p. 1280-1281, sections 2-8; RMC 4-1-010, RMC 4-2-020, and *CP*, p. 123 and *CP*, 1292.

<sup>56</sup> *See* RMC 4-8-100(F) and (G); RMC 4-9-100(A)(2), (B) and (E); and RMC 4-8-080(G) (Type III).

<sup>57</sup> *See* RMC 4-8-100(K)(2).

- RMC 4-2-110(D), if “the applicant can show that minimum density cannot be achieved due to lot configuration, lack of access, environmental or physical constraints;”
- RMC 4-2-120C(3), if “the applicant can show that the same or better result will occur because of creative design solutions, unique aspects or use, etc., that cannot be fully anticipated;”
- RMC 4-2-115(E)(2), if the individual proposal merits, the intent of the standards and guidelines, and creative design alternatives are met; and
- RMC 4-2-130B(2), if there will be the same or better result.

**b. The Hearing Examiner shall interpret Title 4.**

Under RMC 4-8-070(I)(2), “[i]t shall be the duty of the Hearing Examiner to interpret the provisions of Chapter 4-2 RMC, Zoning Districts – Uses and Standards, in such a way as to carry out the intent and purpose of the plan thereof.” RMC 4-9-200(G)(13)(c) explains that the Hearing Examiner’s “strict compliance with any one or more particular criterion may **not** be necessary or reasonable”(emphasis added). RMC 4-8-100(G)(3), states that “[c]onditions, modifications and restrictions which may be imposed are, but are not limited to, **additional setbacks** ...”(emphasis added). Accordingly, not only does the project satisfy RMC 4-3-100, Title 4 gives the Hearing Examiner the authority to do exactly what he did, modify the 15-foot maximum setback of RMC 4-2-120(A).

**c. The Reviewing Official has broad discretion.**

**1. RMC 4-3-100(D).**

The applicable design section, RMC 4-3-100(D) states that “[t]he Reviewing Official 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 [Reviewing] Official 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.” Even if RNHG’s interpretation of RMC 4-3-100 and RMC 4-10-050 are correct, RMC 4-3-100(D) lets the Reviewing Official deviate from those limitations.

Utilizing RMC 4-8-100(K)(2), the City Council adopted the Hearing Examiner’s finding, conclusions, and decision. The Hearing Examiner reasoned that Wal-Mart’s proposal “is appropriate given either the ‘employment area valley’ or ‘commercial corridor’ goals and policies.”<sup>58</sup> He also found that the modernization of the existing building could “create new jobs,” “certainly help revitalize” the site; “attract new patrons” to neighboring businesses; and create a “more aesthetic focal point in this area of the City.”<sup>59</sup>

## **2. RMC 4-3-100(B)(2).**

Under RMC 4-3-100(B)(2), if “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) explains that the **intent** of “the regulations of this Section shall prevail” over other sections of the Code when there is a conflict between the two. The Reviewing Official, in this matter the Hearing Examiner, may apply RMC 4-3-100(B)(2) if there is conflict between RMC 4-3 and any other chapter in Title 4, including RMC 4-10.

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<sup>58</sup> CP, p. 1280, section 2.

<sup>59</sup> CP, p. 1280, section 2.

If there is a conflict, such as RNHG's claim that RMC 4-10-050(A)(4) prohibits the expansion, while sections such as RMC 4-3-100(D) provide the Hearing Examiner with authority to permit such an expansion, RMC 4-3-100(B)(2) resolves it in favor of RMC 4-3-100. If no conflict exists, RMC 4-3-100(D) permits the Reviewing Official to deviate from RMC 4-10-050, RMC 4-3-100, or any other section, if necessary. Thus, RMC 4-3-100 provides the Hearing Examiner the authority to permit the proposal.

**2. RNHG's interpretation of Title 4 is unreasonable.**

RMC 4-3-100(B)(2) and (D) also reveal that RNHG's interpretation results in violations of the Site Plan Development criteria. In addition to requiring that the store be moved within 15 feet of the curb, or be torn down, RNHG's interpretation would violate RMC 4-9-200(A)(2). RMC 4-9-200(A)(2) prohibits the "discordant and undesirable impacts of development both on-and-off site;" such as by destroying mature trees, the failure to "protect and enhance the desirable aspects of the natural landscape and environmental features of the City," such as the trees; and failing to assure that sound and sight buffers, light and air, would not negatively affect the neighboring businesses, such as those immediately southeast of Wal-Mart. All of these prohibitions against "discordant and undesirable" impacts are avoided by Renton's application of the design guidelines.

**D. The Reviewing Official may modify the maximum setback.**

If the various RMC provisions that grant the Hearing Examiner great discretion are not enough, under RMC 4-2-120(C)(15), he may modify the maximum setback "through the site development plan review process if the

applicant can demonstrate that the site development plan orients development to the pedestrian;” “[c]reates a low scale streetscape;” and “[p]romotes safety and visibility.” The Hearing Examiner decision, the public hearing transcript and the P&D Committee hearing transcript, establish that each criterion has been met.<sup>60</sup> Alternatively, RMC 4-2-120(C)(15)(d) provides that the Reviewing Official “may also modify the maximum setback requirement if the applicant can demonstrate that the preceding criteria cannot be met” “[d]ue to factors including but not limited to the unique site design requirements or physical site constraints.”

**1. The proposal orients development to pedestrians and increases pedestrian access, safety and visibility.**

The proposal satisfies RMC 4-2-120(C)(15)(a) because pedestrian links are used to mitigate the impact of the large parking area while providing increased and improved ingress and egress.<sup>61</sup> Wal-Mart “has proposed to increase the width of [the] pedestrian walkway as well as enhance it with pedestrian scale lighting. An additional pedestrian connection has been proposed from the northern portion of the structure to SW 7<sup>th</sup> Street.”<sup>62</sup> The “pedestrian pathways and amenities near the front of the store have been enhanced,” and the “[p]edestrian links through the site and to the surrounding sidewalks help to mitigate some of the impacts and do allow pedestrians to circulate on the site and to and from the site.”<sup>63</sup>

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<sup>60</sup> See CP, p. 1265-1289; p. 123-150; and p. 152-167.

<sup>61</sup> CP, p. 1281 section 5.

<sup>62</sup> CP, p. 1281 sections 5 and 7.

<sup>63</sup> CP, p. 1281 section 5.

The proposal satisfies RMC 4-2-120(C)(15)(c) as it “will adequately provide for public safety,” and “assure safe pedestrian and vehicular movement.”<sup>64</sup> The Hearing Examiner concluded that the proposal complied “with all minimum standards within the pedestrian environment” and “with the Urban Design District D” minimum standards.<sup>65</sup>

**2. The proposal creates a low-scale streetscape.**

The proposal complies with RMC 4-2-120(C)(15)(b) by not creating a structure that is substantially higher than the surrounding structures.<sup>66</sup> Despite the greater than 15-foot setback, the landscaping which exceeds code requirements and the new curved façade helps to transition between the proposed Wal-Mart and neighboring structures.<sup>67</sup> The Hearing Examiner added that “while it might be nice to start again and comply with newer code provisions, the proposed expansion is modest overall and clearly enhances the existing building’s appearance.”<sup>68</sup> Thus, the Hearing Examiner found that “while the applicant’s proposal doesn’t comply with the prescriptive standards of the Design District, it does comply with its intent therefore satisfying the design district requirements.”<sup>69</sup>

**3. Alternatively, RMC 4-2-120(C)(15)(d) is satisfied.**

Alternatively, if the Court believes that the design requirements were not met, under RMC 4-2-120(C)(15)(d) the Court could find, like the Hearing Examiner and City Council, that the maximum setback cannot be met.

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<sup>64</sup> *CP*, p. 1282 section 4.

<sup>65</sup> *See CP*, p. 1267.

<sup>66</sup> *See CP*, p. 1280-1281 section 4.

<sup>67</sup> *CP*, p. 1280-1281 sections 4, 5, and 8.

<sup>68</sup> *CP*, p. 1282 section 16.

<sup>69</sup> *CP*, p. 155 l. 13-17; p. 1281 section 10; and p. 1271-1279, section 28.

There is undisputed testimony that the Wal-Mart store site “is a tight site, given the size of the store and the configuration of the roads and then the other uses there.”<sup>70</sup> Wal-Mart considered a much larger project but concluded that it was not feasible.<sup>71</sup> Consequently, RMC 4-2-120(C)(15)(d) could apply and be another basis for this court to affirm the prior decisions.

**E. The intent of RMC 4-3-100 is satisfied.**

If Wal-Mart was unable to meet the District D design standards, “the applicant must demonstrate how they meet the intent of the Code.”<sup>72</sup> The intent of RMC 4-3-100(A) is (1) to maintain and protect property values; (2) enhance the general appearance of the City; (3) encourage creativity in building and site design; (4) achieve predictability, balanced with flexibility; and (5) to consider the individual merits of proposals. The proposal, while imperfect, meets the intent of the RMC.

**1. Maintains and protects property values.**

The Hearing Examiner found that the area property values “are anticipated to be maintained or increased as a result of the project.”<sup>73</sup> The record contains no contradictory facts because RNHG never participated in the public hearing.

**2. Enhances Renton’s general appearance.**

The Hearing Examiner concluded that the remodeled store would improve the City’s general appearance. The proposal provides “various roof shapes and heights along the eastern façade to break up the massing of the

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<sup>70</sup> CP, p. 141 l. 8-9.

<sup>71</sup> CP, p. 141 l. 10-25.

<sup>72</sup> CP, p. 138 l. 3.

<sup>73</sup> CP, p. 1267 and p. 1281 section 6.

structure,” and 30,000 square feet of landscaping to exceed the code’s landscaping requirements for the site.<sup>74</sup> “The expanded building will probably be a better neighbor than the existing utilitarian store” in part because the applicant exceeded “code requirements to provide additional interior landscaping and perimeter landscaping to shield and buffer the parking lot.”<sup>75</sup> Thus, “the proposed expansion is modest overall and clearly enhances the existing building’s appearance.”<sup>76</sup>

### **3. Encourages building and site design creativity.**

The Hearing Examiner and the City Council concluded that the proposed 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.”<sup>77</sup> The Hearing Examiner agreed with City staff “that the applicant has provided a very creative design with respect to the front elevations of the store.”<sup>78</sup> The Hearing Examiner concluded that despite the fact that “[t]he proposal does not comply with the maximum front yard setback ... the expansion does increase the conformity of the project in that it moves closer towards Hardie Avenue SW and Rainier Avenue S” and thus it does “comply with all policies within the Commercial Corridor Comprehensive Plan and the Commercial Arterial Zone.”<sup>79</sup> The Hearing Examiner and the City Council reasoned that “[t]here are many limitations

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<sup>74</sup> *CP*, p. 1267.

<sup>75</sup> *CP*, p. 1280-1280 section 4.

<sup>76</sup> *CP*, p. 1282 section 16.

<sup>77</sup> *CP*, p. 1280 section 3 and p. 166 l. 11- p. 167 l.2.

<sup>78</sup> *CP*, p. 139 l. 3-5.

<sup>79</sup> *CP*, p. 1266.

on building architecture due to the need for altering an existing structure,” and that common-sense “weighs in favor of the excessive setback.”<sup>80</sup>

**4. Achieves predictability balanced with flexibility.**

The Hearing Examiner and the City Council understood that flexibility was required because “[o]nly an incredibly large expansion or complete rebuild could move the front of the store to the street and parking to the rear.”<sup>81</sup> As a result, they and Superior Court agreed that the proposal satisfies the intent of the RMC.<sup>82</sup> Thus, they approved the proposal.

**5. Individual merits benefit Renton.**

Wal-Mart’s modest expansion would make the store more attractive, maintain or increase property values, add new jobs, revitalize the area, attract patrons to neighboring businesses, and “create a more aesthetic focal point in this area of the City.”<sup>83</sup> Thus, the proposal satisfies the intent Title 4 and RMC 4-3-100(A)(1).

**F. Wal-Mart becomes more vibrant and pedestrian-friendly.**

Ultimately, Renton concluded that a remodeled Wal-Mart, with increased and wider walkways, would make the parking lot and store entrance more vibrant and pedestrian-friendly. While RNHG attempts to substitute its judgment for that of the Renton City Council, there is no evidence in the record disputing or undermining Renton’s belief. Based on RNHG’s failure

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80 *CP*, p. 1266-1267; and p. 166 l. 12 – 18.

81 *CP*, p. 1280, section 3.

82 *CP*, p. 130 l. 2; p. 1280, section 2; p. 166 l. 9-22; p. 171 l.1-4.

83 *CP*, p. 1280-1281, sections 1 - 6.

to participate in the public hearing, it does not have a record to challenge Renton's conclusions.

**G. RCW 4.84.370 provides for Attorneys' Fees.**

The City of Renton is entitled to attorneys' fees under RCW 4.84.370.

RCW 4.84.370(1) provides in pertinent part that in a LUPA matter:

The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if: (a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town . . .; and (b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

Here, Renton (and Wal-Mart) was a prevailing party before the City and in the prior Superior Court proceedings. As a result, if this Court affirms the decisions of the Renton City Council and the Superior Court, Renton (and Wal-Mart) is entitled to an award of reasonable attorneys' fees and costs under RCW 4.84.370(1).

**6. Conclusion.**

Under LUPA, RNHG does not have standing to bring this appeal since it failed to exhaust its remedies. Under LUPA, there is no basis for this Court to reverse the Renton City Council's decision. Its land use decision is supported by substantial and largely uncontroverted evidence. RNHG has not proven that Renton's decision was clearly erroneous. After giving deference to Renton's expertise in interpreting its laws and policies, and viewing the evidence in a light most favorable to Respondents, Renton's exercise of discretion and decision to permit expansion is permissible under

the RMC. As a result, this Court should deny RNHG's motion and dismiss its appeal.

DATED THIS 10 August 2011  
RENTON, WASHINGTON

Lawrence J. Warren  
Renton City Attorney

By: \_\_\_\_\_

  
Garmon Newsom II  
WSBA No. 31418  
Attorney for Respondent  
City of Renton

# APPENDIX A

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

**RECEIVED**  
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RENTON CITY ATTORNEY

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NO. 66874-9-I

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RENTON NEIGHBORS FOR HEALTHY GROWTH,

Appellant,

v.

PACLAND; JEFF CHAMBERS, P.E.; BONNELL FAMILY, LLC;  
PETER BONNELL; CITY OF RENTON,

Respondents,

and

WAL-MART STORES, INC.,

Intervenor-Respondent.

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OPENING BRIEF OF APPELLANT

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## I. INTRODUCTION

The City of Renton recently approved a proposal by intervenor Wal-Mart Stores, Inc. to expand its existing Wal-Mart Discount Store into a Superstore. Renton Neighbors for Healthy Growth, a group of Renton citizens, have appealed that decision because it allows an illegal expansion of a non-conforming structure in violation of the City Code. The structure, as it stands, is non-conforming, which means that it is currently in violation of regulations in the Code. For example, while the maximum frontage setback requirement in the Code is 15 feet, the Wal-Mart's frontage setback is 555 feet.

Under the Renton Code, a non-conforming structure cannot be expanded unless it is made conforming. RMC 4-10-050A. Wal-Mart has proposed to expand the existing illegal structure without bringing it into conformance with the Code. The Renton City Council approved the expansion despite the prohibition against such expansion in RMC 4-10-050A.

The proposed design of the new Superstore also violates the City of Renton's design regulations. The Code contains mandatory rules that prescribe how the Wal-Mart structure must be designed. The Hearing Examiner's own decision reveals that the Wal-Mart proposal violates several

2. Whether the Hearing Examiner decision approving the Wal-Mart expansion proposal should be reversed because it violates the City's design regulations applicable to District D in RMC 4-3-100 (*see* Appendix B).

#### IV. STATEMENT OF THE CASE

##### A. The Wal-Mart Expansion Proposal

On behalf of Wal-Mart Stores, Inc., Pacland filed an application on February 8, 2010 for Site Plan review of a proposal to expand and convert the existing Wal-Mart Discount Store located at 743 Rainier Avenue South in Renton into a Superstore. CP 1175-1177. *See also* Appendix C (CP 670 – Site Plan). The project site is approximately 13.6 acres and is located within the Commercial Arterial (CA) and Medium Industrial (IM) zoning designations within Urban Design District “D.” CP 1016.

The existing Wal-Mart store was built approximately fifteen years ago. CP 399; CP 142. Needless to say, the City of Renton's regulations have changed since the original store was built. For example, the City adopted a maximum frontage setback requirement of 15 feet for the site after the Wal-Mart was built. Ordinance 5437 (2008) (amending RMC 4-2-120A). In addition, the City adopted new design regulations. Ordinance 5286 (2007).

Economic Development issued a preliminary report to the Hearing Examiner on April 27, 2010. CP 1016-1035.

A public hearing was held before the City of Renton Hearing Examiner on Tuesday, April 27, 2010. CP 986. During the hearing, the Hearing Examiner described the proposal as a “sea of asphalt” and when Wal-Mart’s attorney attempted a different characterization, the Hearing Examiner responded “it’s hard to not call a sea of asphalt, a sea of asphalt, frankly. There is a lot of asphalt out there.” CP 142.

After hearing testimony and reviewing evidence, the Examiner issued a decision approving the Wal-Mart Expansion Site Plan on May 13, 2010. *See* CP 986-1004 (Appendix D). In his decision, the Examiner acknowledged that the project was inconsistent with provisions in the Renton Code, but approved it nonetheless. CP 1001 (§ 3); CP 1003 (§ 16). He stated that “while it might be nice to start again and comply with newer Code provisions,” the proposed expansion was modest and enhances the existing building’s appearance. CP 1003 (§ 16). In his decision, he stated “maybe the next remodel will include an elevated parking structure to reduce the sea of asphalt.” *Id.*

## V. ARGUMENT

### A. Standard of Review

The Land Use Petition Act (LUPA), RCW 36.70C.130, sets forth the standard of review that this Court must apply in its review of the Renton City Council's decision to approve the Wal-Mart expansion site plan proposal. Review is appellate review on the administrative record created before the Hearing Examiner. *HJS Dev. Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 467, 61 P.3d 1141 (2003). In reviewing an administrative decision, an appellate court stands in the same position as the Superior Court. *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

The City Council's decision must be reversed if:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow 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; . . .

Where the Court considers the credibility of findings of fact only, the standard of review is “substantial evidence.” RCW 36.70C.130(1)(c); *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 61, 52 P.3d 522 (2002). “Substantial evidence” is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the determination of fact. *Id.*

**B. The Wal-Mart Proposal is an Illegal Expansion of a Non-Conforming Structure**

The City of Renton’s decision approving the Wal-Mart expansion should be reversed because the Wal-Mart proposal is an illegal enlargement of an existing non-conforming structure under RMC 4-10-050 (Appendix A) as is explained below.

**1. Non-conforming structures may not be expanded unless they are made conforming**

A “non-conforming structure” is “a lawful structure that does not comply with the current development standards (yard setbacks, lot size, lot coverage, height, etc.) for its zone, but which complied with applicable regulations at the time it was established.” RMC 4-11-112 (Definition N).

The policy of zoning legislation is to phase out non-conforming uses. *City of University Place v. McGuire*, 144 Wn.2d 640, 648, 30 P.3d 453

prohibits the beneficial use to which the property has previously been devoted.” *Goldblatt v. Town of Hempstead, New York*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962).

A legally established building or structure may remain if it does not conform with the provisions of the Renton Municipal Code, but only if certain conditions are met, including the following:

**3. Alterations:** A legal nonconforming structure shall not be altered beyond the limitations specified below:

**a. Structures With Rebuild Approval Permits:** Alteration work exceeding an aggregate cost of one hundred percent (100%) of the value of the building or structure shall be allowed if:

(1) the building or structure is made conforming by the alterations; or

(2) the alterations were imposed as a condition of granting a rebuild approval permit; or

(3) alterations are necessary to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority. Alterations shall not result in or increase any non-conforming conditions unless they were specifically imposed as a condition of granting a rebuild approval permit, pursuant to RMC 4-9-120.

**b. Other Legal Nonconforming Structures:** The cost of the alterations shall not exceed an aggregate cost of fifty percent (50%) of the value of the building or structure, based upon its most recent assessment or appraisal, unless the amount over fifty percent (50%) is used to make the building

(CA) and Medium Industrial (IM) on the City of Renton zoning map.<sup>2</sup> The CA zoning designation requires a maximum front yard setback of 15 feet. RMC 4-2-120A.

As it stands, there is an enormous parking lot between Hardy Avenue SW/Rainier Avenue S. and the entrance to the Wal-Mart. CP 693. The front street for the Wal-Mart is Hardy Avenue SW and Rainier Avenue S. /SR 167. *Id.* There is far more than 500 feet between the front street and the building. *Id.* Therefore, the Wal-Mart is in violation of the maximum front yard setback of 15 feet. The existing Wal-Mart is also in violation of the City's design regulations as is explained in more detail in Section C below.

3. The proposed Wal-Mart expansion does not conform with code requirements

RMC 4-10-050(A)(4), the provision quoted above, does not allow Wal-Mart to expand its non-conforming structure as proposed. That provision makes it clear that enlargements are not allowed unless they make the structure conforming or unless it is consistent with a rebuild approval permit. Wal-Mart is not seeking, nor has it received, a rebuild approval

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<sup>2</sup> Because only a small portion of the site is Medium Industrial (IM), the staff decided to review the project only under the Commercial Arterial (CA) requirements. RNHG does not necessarily agree with this approach, but, for practical purposes, it did not ultimately affect the project.

From reading this exchange, it is evident that the City staff interpreted RMC 4-10-050(A) incorrectly. The City staff was referring to the Code requirements for “alterations” as if those were the conditions for “expansion.” But the conditions regarding the cost of 50 percent of the value of the building or structure do not apply to expansion, only alterations. Unfortunately, the Hearing Examiner and the City Council relied on that incorrect interpretation of the City Code.

The Examiner’s Decision, which was affirmed by the Council, states:

The existing use, a large “big box” establishment does not meet current code requirements for the setback along its frontage street, the Hardie-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 building and expansion in its other particulars, height, other setbacks and lot coverage meets the Zoning Code. Similarly, the parking lot landscaping standards would require complete redesign of the parking area for what is a modest remodel.

CP 1001 (¶ 3). There is no reference to or acknowledgment of RMC 4-10-050 by the Examiner in his conclusion.

structures is a question of statutory interpretation and questions of statutory interpretation are reviewed *de novo*. *Whatcom County Fire Dist. No. 21 v. Whatcom County*, 151 Wn. App. 601, 610, 215 P.3d 956 (2009). The objective in interpreting a statute is to determine the Legislature's intent. *Id.* If a statute's meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Id.* These principles apply to interpretations of local ordinances. *Id.*

At issue is the proper interpretation of the relationship between two provisions of the City of Renton Code: RMC 4-10-050(A) (non-conforming uses) (*see* Appendix A) and RMC 4-3-100 (design regulations) (*see* Appendix B).

The section referred to by the Examiner (RMC 4-3-100) says, in so many words, that all development in the commercial arterial (CA) zone, including Big Box, is required to comply with the urban design regulations. RMC 4-3-100(B)(2) and (4). That means that a proposal to enlarge a non-conforming structure must comply with the design regulations. This provision cannot possibly be read to say that the design regulations supersede RMC 4-10-050. Design regulations are meant to be an "overlay" to other regulations that set forth standards for design. The Urban Design Regulations

the prohibition against expansion. Instead they vaguely argued that the Examiner's reliance on RMC 4-3-100 to approve the project overrides the prohibition on expansion of non-conforming uses because of a conflict. Their argument begs the question: Where is the conflict? Where is there a conflict between a minimum standard in the Design Regulations and the non-conforming structure prohibition?

There is no conflict. The only "conflict" that exists is the proposal's conflict with the legal requirements in the code. To say that the design regulations somehow trump the non-conformance ordinance because of a conflict between the two is a red herring argument.

C. The Wal-Mart Proposal Violates the City's Design Regulations

Stepping away from the issue of non-conformance, the second issue presented to this Court is whether the Hearing Examiner decision to approve the Wal-Mart expansion proposal should be reversed because the proposal violates the City's design regulations applicable to District D in RMC 4-3-100.

(Building location and orientation) Intent: To ensure visibility of businesses, establish active, lively uses along sidewalks and pedestrian pathways; organize buildings in such a way that pedestrian use of the district is facilitated; encourage siting of structures so that natural light and solar access are available to other structures and open space; enhance the visual character and definition of streets within the district; provide an appropriate transition between buildings, parking areas, and other land uses in the street; and increase privacy for residential uses located near the street.

(Building entries) Intent: To make building entrances convenient to locate and easy to access, and ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district.

(Pedestrian environment) Intent: To enhance the urban character of development in the Urban Center and the Center Village by creating pedestrian networks and by providing strong links from the streets and drives to building entrances; make the pedestrian environment safer and more convenient, comfortable, and pleasant to walk between businesses, on sidewalks, to and from access points, and through parking lots; and promote the use of multi-modal and public transportation systems in order to reduce other vehicular traffic.

(Pedestrian amenities) Intent: To create attractive spaces that unify the building and street environments and are inviting and comfortable for pedestrians; and provide publicly accessible areas that function for a variety of activities, at all times of the year, and under typical seasonal weather conditions.

(Building architectural design) Intent: To encourage building design that is unique and urban in character, comfortable on a human scale, and uses appropriate building materials that are

2. The minimum standards set forth in the design regulations are mandatory

The Wal-Mart expansion is subject to compliance with these design regulations in RMC 4-3-100. *See* RMC 4-2-060; RMC 4-2-080(A)(72). The design regulations apply to all development in the CA zone. RMC 4-3-100(B)(5). Big box retail in the Commercial Arterial zone is required to comply with the design regulations applicable for District D. RMC 4-3-100(B)(2).

The Urban Design Regulations were established in accordance with and to implement policies established in the Land Use and Community Design Elements of the Renton Comprehensive Plan. RMC 4-3-100(A)(1).

The minimum standards set forth in the design regulations are mandatory. The design regulations state that they are meant to:

Establish two (2) categories of regulations:

(a) “Minimum standards” **that must be met**, and

(b) “Guidelines” that, while not mandatory, are considered by the Development Services Director in determining if the proposed action meets the intent of the Design Guidelines.

fronting sidewalk. Approval of the proposal undermines the attempt to change the character of the area.

The record could not be more clear – the Wal-Mart proposal is inconsistent with several minimum standards in the design regulations. In the Preliminary Report to the Examiner, the staff incorporated a table in its review of compliance with District D Design Guidelines. *See* CP 1027-1035. Throughout the table, the staff reported repeatedly that the project is “not compliant” with various minimum standards listed. *Id.* The Examiner’s Decision incorporates the table that sets forth the staff’s analysis of the proposal’s compliance with Design District ‘D’ guidelines. CP 992-CP 1001. The table shows that the Wal-Mart proposal is not compliant with many minimum standards in the Design Regulations.

Among other things, the parking lot location violates the minimum standard that states:

No surface parking shall be located between the building and the front property line or the building and side property line on the street side of a corner lot. . . .

RMC 4-3-100(F)(1)(a). In obvious violation of this standard, the Wal-Mart proposal will have a massive parking lot between the building and the front

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briefing before the Superior Court. This belated attempt to rely on the later enacted provisions that do not apply to the Wal-Mart proposal was inappropriate.

With respect to building architectural design, another minimum standard in the code requires that “[a]ll building facades shall include modulation or articulation at intervals of no more than forty feet (40’).” RMC 4-3-100(I)(1)(a). The Wal-Mart proposal is not compliant with this minimum standard. The staff comment indicates that the applicant would not be required to comply with the modulation requirements for the southern and western facades because the applicant was not altering those facades with the project. CP 998. Those that are being expanded, the north and eastern facades, will also not be required to comply because Wal-Mart is pursuing other different miscellaneous design improvements (not what is required by the minimum standard). The Examiner did not require that either the north or eastern façade meet the minimum standard for modulation or articulation at intervals of no more than forty feet (40’). Again, it was legal error for the City staff and Hearing Examiner to conclude that the project could be approved without adherence to this minimum standard.

Overall, the proposal should have been denied because of these failures to meet the mandatory minimum standard design requirements.

(d) The deviation manifests high quality design; and

(e) The modification will enhance the pedestrian environment on the abutting and/or adjacent streets and/or pathways.

RMC 4-3-100(2) (emphasis supplied) (this provision is in both versions of RMC 4-3-100).

RMC 4-9-250(D), referred to in the quote above, contains the requisite procedures for reviewing “modifications.” That provision states:

**Modification Procedures:**

(1) Application Time and Decision authority: Modification from standards, either in whole or in part, shall be subject to review and decision by the Planning/Building/Public Works Department upon submittal in writing of jurisdiction for such modification.

(2) Decision Criteria: Whenever there are practical difficulties involved in carrying out the provisions of this Title, the Department Administrator may grant modifications for individual cases provided he/she shall first find that a specific reason makes the strict letter of this code impractical, that the intent and purpose of the governing land use designation of the Comprehensive Plan is met and that the modification is in conformity with the intent and purpose of this Code, and that such modification:

(a) Substantially implements the policy direction of the policies and objectives of the Comprehensive Plan Land Use Element and the Community Design Element and the proposed modification is the minimum adjustment necessary to implement these policies and objectives;

regulations, RMC 4-4-090. *Id.* A formal analysis was conducted by the Planning Department staff pursuant to the modification procedures provision in RMC 4-9-250(D). *Id.* The Planning Department staff looked at each of the criteria listed above and ultimately granted the modification request. As is stated in the Hearing Examiner's Decision:

The applicant has applied for a Refuse Modification in order to reduce the refuse area from 1,500 square feet to 30 cubic yards. The modification was granted administratively due to the proposed compacter that is engineered for high volume usage.

CP 774. As was done in this case for the refuse area, modification requests are dealt with administratively through the formal process as set forth in RMC 4-9-250(D). The City made a legal conclusion that a modification was not required for the design violations and Wal-Mart did not, therefore, apply for or prove that it qualified for modification of the minimum standards in the design regulations. Respondents cannot belatedly attempt to excuse the violations of the code after-the-fact when this process was not pursued.

## VI. CONCLUSION

In conclusion, RNHG requests that the Court reverse the City of Renton's Decision on the Wal-Mart Expansion Site Plan approval for the reasons stated above and order that the Wal-Mart proposal be denied.

## **APPENDIX A**

Such structures may be replaced, renovated, and/or expanded pursuant to the provisions of the R-14 Zone. (Ord. 4963, 5-13-2002)

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**This page of the Renton Municipal Code is current through Ordinance 5556, passed October 11, 2010.**

Disclaimer: The City Clerk's Office has the official version of the Renton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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# DEVELOPMENT REGULATIONS

Title 4

REVISED AND COMPILED ORDINANCES

City of

**RENTON**

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1998



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EXHIBIT A  
APPENDIX B

CP 1297

**N. AMENDMENTS TO SHORELINE MASTER PROGRAM:**

1. **Time:** The City shall review this Master Program every four (4) years hereafter, or sooner if necessary. (Ord. 3758, 12-5-1983, Rev. 7-22-1985 (Min.), 3-12-1990 (Res. 2787), 7-16-1990 (Res. 2805), 9-12-1993 (Min.), Ord. 4716, 4-13-1998)

2. **Review Process:** Any amendments to this Master Program shall be reviewed first by the Planning Commission, which shall conduct one public hearing on the proposed amendment. The Planning Commission shall make a recommendation to the City Council, which may hold one public hearing before making a determination. Any proposed amendment shall be submitted to the Washington State Department of Ecology for approval in accordance with the Shoreline Management Act of 1971. (Ord. 3758, 12-5-1983, Rev. 7-22-1985 (Min.), 3-12-1990 (Res. 2787), 7-16-1990 (Res. 2805), 9-12-1993 (Min.), Ord. 4716, 4-13-1998)

**O. VIOLATIONS OF THIS CHAPTER AND PENALTIES:**

Unless otherwise specified, violations of this Chapter are misdemeanors subject to RMC 1-3-1. (Ord. 4722, 5-11-1998; Ord. 5159, 10-17-2005)

**P. APPEALS:**

See RMC 4-8-110H. (Ord. 4722, 5-11-1998)

**4-3-095 (Deleted by Ord. 5286, 5-14-2007)**

**4-3-100 URBAN DESIGN REGULATIONS:**

**A. PURPOSE:**

The purpose of this Section is to:

1. Establish design review regulations in accordance with policies established in the Land Use and Community Design Elements of the Renton Comprehensive Plan in order to:
  - a. Maintain and protect property values;

- b. Enhance the general appearance of the City;

- c. Encourage creativity in building and site design;

- d. Achieve predictability, balanced with flexibility; and

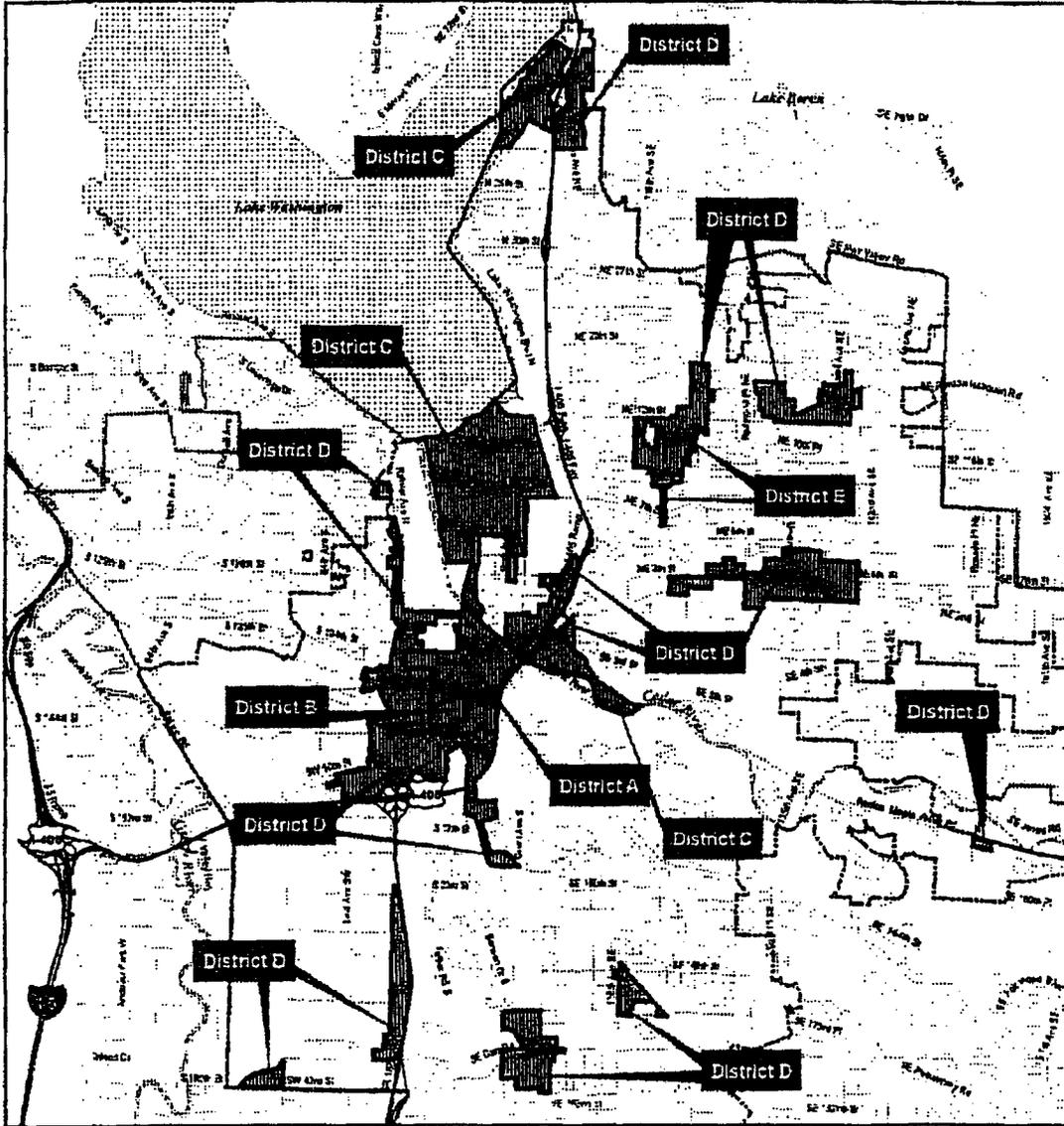
- e. Consider the individual merits of proposals.

2. Create design standards and guidelines specific to District 'A' that ensure design quality of structures and site development implementing the City of Renton's Comprehensive Plan Vision for portions of the Urban Center – Downtown zoned Center Downtown and Residential Multi-Family Urban Center. This Vision is of a downtown that will continue to develop into an efficient and attractive urban city. The Vision of the Downtown Core is of mixed uses with high-density residential living supported by multi-modal transit opportunities. Redevelopment will be based on the pattern and scale of established streets and buildings. (Ord. 5355, 2-25-2008)

3. Create design standards and guidelines specific to District 'B' (the South Renton Neighborhood) that ensure design quality of structures and site development implementing the City's South Renton Neighborhood Plan. The South Renton Neighborhood Plan, for a residential area located within the Urban Center – Downtown, maintains the existing, traditional grid street plan and respects the scale of the neighborhood, while providing new housing at urban densities. The South Renton Neighborhood Plan supports a residential area that is positioned to capitalize on the employment and retail opportunities increasingly available in the Downtown Core.

4. Create design standards and guidelines specific to the Urban Center – North (District 'C') that ensure design quality of structures and site development that implements the City of Renton's Comprehensive Plan Vision for its Urban Center – North. This Vision is of an urban environment that concentrates uses in a "grid pattern" of streets and blocks. The Vision is of a vibrant, economically vital neighborhood that encourages use throughout by pedestrians.

3. Urban Design Districts Map:



November 10, 2009  
 0 2,500 5,000  
 1:55,000  
 Feet



# Urban Design Districts

Community & Economic Development  
 Alex Pietsch, Administrator  
 Design & Analysis Services  
 Aileen A. Johnson, Patrick Knicker



(Amd. Ord. 4991, 12-9-2002; Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5191, 12-12-2005; Ord. 5286, 5-14-2007; Ord. 5331, 12-10-2007; Ord. 5355, 2-25-2008; Ord. 5369, 4-14-2008; Ord. 5437, 12-8-2008; Ord. 5518, 12-14-2009)

**a. Minimum Standards for Districts 'A', 'B' and 'D':**

- i. Orient buildings to the street with clear connections to the sidewalk.
- ii. The front entry of a building shall not be oriented to a drive aisle, but instead a public or private street or landscaped pedestrian-only courtyard.

**b. Minimum Standards for District 'C':**

- i. Buildings on designated pedestrian-oriented streets shall feature "pedestrian-oriented facades" and clear connections to the sidewalk (see Illustration, RMC 4-3-100E7a). Such buildings shall be located adjacent to the sidewalk, except where pedestrian-oriented space is located between the building and the sidewalk. Parking between the building and pedestrian-oriented streets is prohibited.
- ii. Buildings fronting on pedestrian-oriented streets shall contain pedestrian-oriented uses.
- iii. Nonresidential buildings may be located directly adjacent to any street as long as they feature a pedestrian-oriented facade.
- iv. Buildings containing street-level residential uses and single-purpose residential buildings shall be set back from the sidewalk a minimum of ten feet (10') and feature substantial landscaping between the sidewalk and the building (see Illustration, RMC 4-3-100E7b).
- v. If buildings do not feature pedestrian-oriented facades they shall have substantial landscaping between the sidewalk and building. Such landscaping shall be at least ten feet (10') in width as measured from the sidewalk (see illustration, RMC 4-3-100E7c).

**c. Guideline Applicable to District 'C':** Siting of a structure should take into consideration the continued availability of natural light (both direct and reflected) and direct sun exposure to nearby buildings and open space (except parking areas).

**d. Guideline Applicable to Districts 'C' and 'D':** Ground floor residential uses located near the street should be raised above street level for residents' privacy.

**3. Building Entries:**

**Intent:** To make building entrances convenient to locate and easy to access, and ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district.

**a. Minimum Standards for Districts 'A', 'B', 'D' and 'E':**

- i. A primary entrance of each building shall be located on the facade facing a street, shall be prominent, visible from the street, connected by a walkway to the public sidewalk, and include human-scale elements.
- ii. Multiple buildings on the same site shall provide a continuous network of pedestrian paths and open spaces that incorporate landscaping to provide a directed view to building entries.
- iii. Ground floor units shall be directly accessible from the street or an open space such as a courtyard or

corporated into the street-oriented facade.

iii. Entries from the street should be clearly marked with canopies, architectural elements, ornamental lighting, or landscaping. Entrées from parking lots should be subordinate to those related to the street for buildings within District 'A'.

e. **Guideline Applicable to Districts 'B' and 'E':** Front yards should provide transition space between the public street and the private residence such as a porch, landscaped area, terrace, or similar feature.

f. **Guideline Applicable to District 'C':** For projects that include residential uses, entries should provide transition space between the public street and the private residence such as a porch, landscaped area, terrace, common area, lobby, or similar feature.

**4. Transition to Surrounding Development:**

**Intent:** To shape redevelopment projects so that the character and value of Renton's long-established, existing neighborhoods are preserved.

a. **Minimum Standards for Districts 'A' and 'D':** Careful siting and design treatment are necessary to achieve a compatible transition where new buildings differ from surrounding development in terms of building height, bulk and scale. At least one of the following design elements shall be considered to promote a transition to surrounding uses:

- i. Setbacks at the side or rear of a building may be increased by the Reviewing Official in order to reduce the bulk and scale of larger buildings and so that sunlight reaches adjacent yards;
- ii. Building proportions, including step-backs on upper levels;

iii. Building articulation to divide a larger architectural element into smaller increments; or

iv. Roof lines, roof pitches, and roof shapes designed to reduce apparent bulk and transition with existing development.

b. **Minimum Standards for Districts 'B' and 'E':** Careful siting and design treatment are necessary to achieve a compatible transition where new buildings differ from surrounding development in terms of building height, bulk, and scale. At least one of the following design elements shall be considered to promote a transition to surrounding uses:

i. Setbacks at the side or rear of a building may be increased in order to reduce the bulk and scale of larger buildings and so that sunlight reaches adjacent yards; or

ii. Building articulation provided to divide a larger architectural element into smaller pieces; or

iii. Roof lines, roof pitches, and roof shapes designed to reduce apparent bulk and transition with existing development.

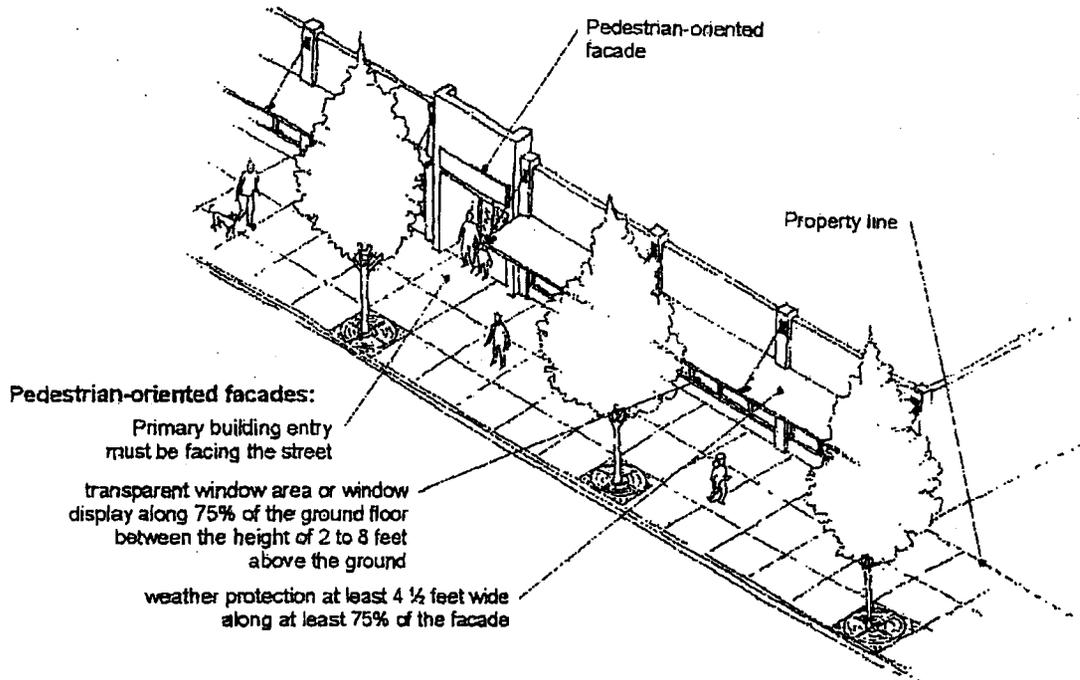
c. **Minimum Standards for District 'C':**

i. For properties along North 6th Street and Logan Avenue North (between North 4th Street and North 6th Street), applicants shall demonstrate how their project provides an appropriate transition to the long-established, existing neighborhood south of North 6th Street known as the North Renton Neighborhood.

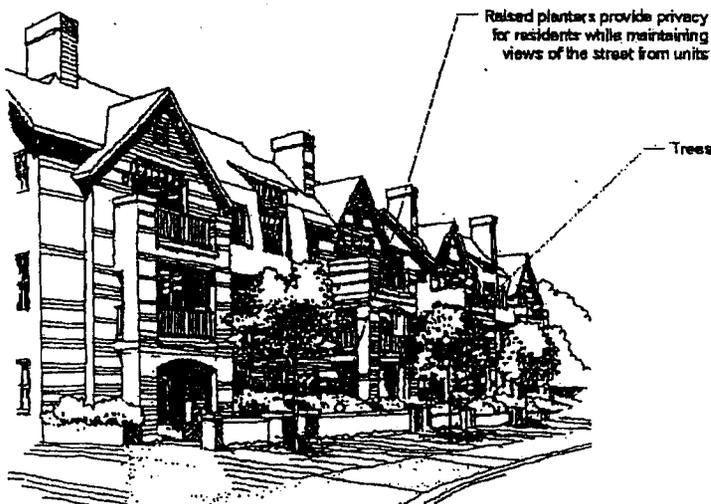
ii. For properties located south of North 8th Street, east of Garden Avenue North, applicants must demonstrate how their project appropriately provides transitions to existing industrial uses.

7. Illustrations.

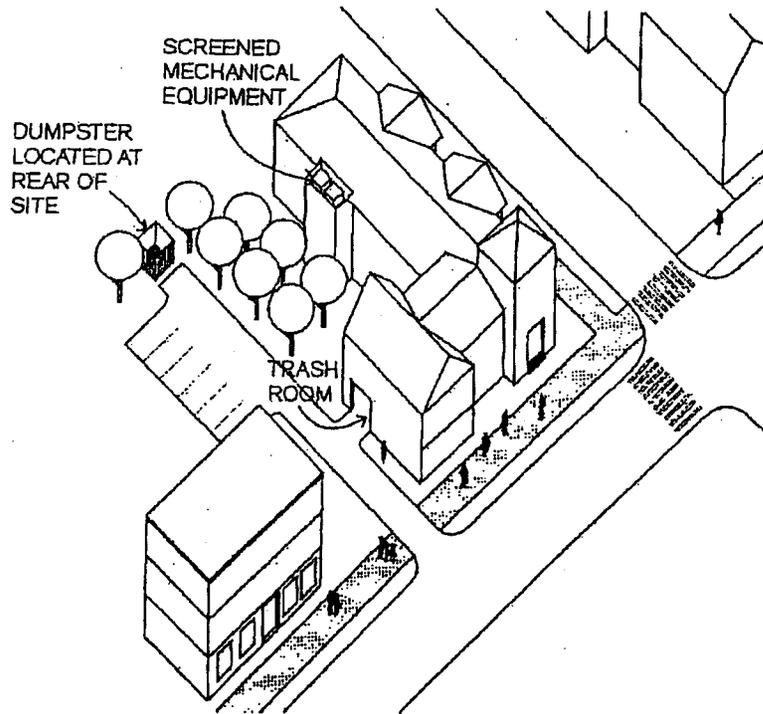
a. Pedestrian-oriented facades (see subsection E2b(i) of this Section).



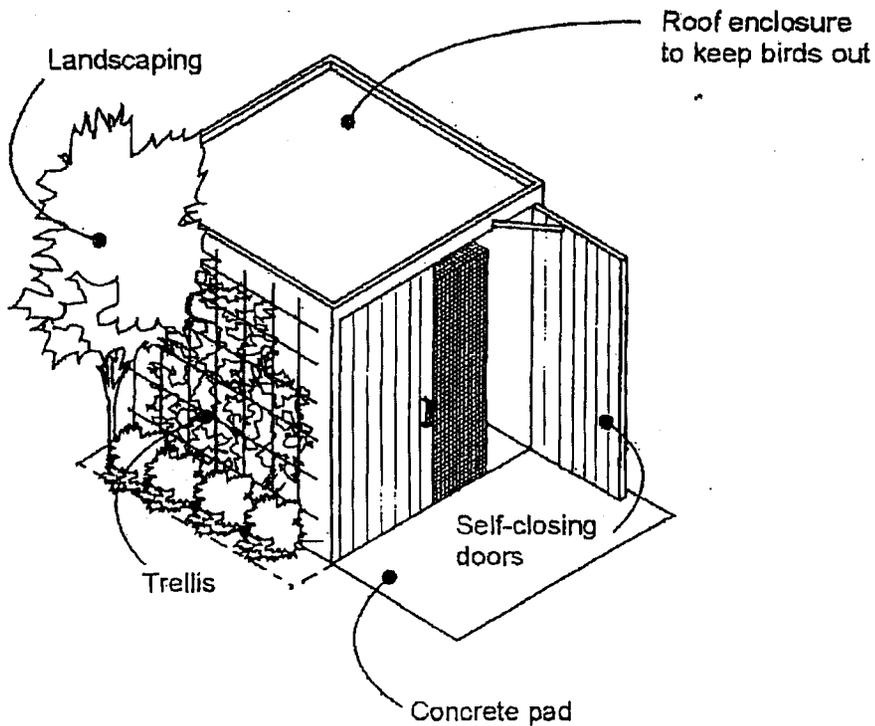
b. Street-level residential (see subsection E2b(iv) of this Section).



e. Service elements located to minimize the impact on the pedestrian environment (see subsection E5a(i) of this Section).



f. Service enclosure (see subsection E5a(iii) of this Section).



**F. PARKING AND VEHICULAR ACCESS:**

**Intent:** To provide safe, convenient access to the Urban Center and the Center Village; incorporate various modes of transportation, including public mass transit, in order to reduce traffic volumes and other impacts from vehicles; ensure sufficient parking is provided, while encouraging creativity in reducing the impacts of parking areas; allow an active pedestrian environment by maintaining contiguous street frontages, without parking lot siting along sidewalks and building facades; minimize the visual impact of parking lots; and use access streets and parking to maintain an urban edge to the district.

**1. Location of Parking:**

**Intent:** To maintain active pedestrian environments along streets by placing parking lots primarily in back of buildings.

**a. Minimum Standard for Districts 'A', 'B' and 'D':** No surface parking shall be located between a building and the front property line or the building and side property line on the street side of a corner lot.

**b. Minimum Standards for District 'C':**

**i. On Designated Pedestrian-Oriented Streets:**

(a) Parking shall be at the side and/or rear of a building, with the exception of on-street parallel parking. No more than sixty feet (60') of the street frontage measured parallel to the curb shall be occupied by off-street parking and vehicular access.

(b) On-street parallel parking spaces located adjacent to the site can be included in calculation of required parking. For parking ratios based on use and zone, see RMC 4-4-080, Parking, Loading and Driveway Regulations.

(c) On-street parallel parking shall be required on both sides of the street.

ii. All parking lots located between a building and street or visible from a street shall feature landscaping between the sidewalk and building; see RMC 4-4-080F, Parking Lot Design Standards.

iii. **Surface Parking Lots:** The applicant must successfully demonstrate that the surface parking lot is designed to facilitate future structured parking and/or other infill development. For example, an appropriate surface parking area would feature a one thousand five hundred foot (1,500') maximum perimeter area and a minimum dimension on one side of two hundred feet (200'), unless project proponent can demonstrate future alternative use of the area would be physically possible. Exception: If there are size constraints inherent in the original parcel (see illustration, subsection F5a of this Section).

**c. Minimum Standards for District 'E':**

i. No surface parking shall be located between a building and the front property line or the building and side property line on the street side of a corner lot.

ii. Parking shall be located off an alley if an alley is present.

**d. Guideline Applicable to Districts 'A', 'B', 'C' and 'D':** In areas of mixed use development, shared parking is recommended.

**e. Guidelines Applicable to District 'C':**

i. If a limited number of parking spaces are made available in front of a building for passenger drop-off and pick-up, they shall be parallel to the building facade.

- (3) Display windows;
- (4) Brick, tile, or stone;
- (5) Pre-cast decorative panels;
- (6) Vine-covered trellis;
- (7) Raised landscaping beds with decorative materials; or
- (8) Other treatments that meet the intent of this standard.

(c) Facades shall be articulated architecturally, so as to maintain a human scale and to avoid a solid wall. Vehicular entrances to nonresidential or mixed use parking structures shall be articulated by arches, lintels, masonry trim, or other architectural elements and/or materials (see illustration, subsection F5d of this Section).

**b. Minimum Standards for District 'D':**

- i. Parking structures shall provide space for ground floor commercial uses along street frontages at a minimum of seventy five percent (75%) of the frontage width (see illustration, subsection F5c of this Section).
- ii. The entire facade must feature a pedestrian-oriented facade.
- iii. Facades shall be articulated architecturally, so as to maintain a human scale and to avoid a solid wall. Vehicular entrances to nonresidential or mixed use parking structures shall be articulated by arches, lintels, masonry trim, or other architectural elements and/or materials (see illustration, subsection F5d of this Section).

**c. Guidelines Applicable to Districts 'A', 'C' and 'D':**

- i. Parking garage entries should be designed and sited to complement, not subordinate, the pedestrian en-

try. If possible, locate the parking entry away from the primary street, to either the side or rear of the building.

ii. Parking garage entries should not dominate the streetscape.

iii. The design of structured parking at finished grade under a building should minimize the apparent width of garage entries.

iv. Parking within the building should be enclosed or screened through any combination of walls, decorative grilles, or trellis work with landscaping.

v. Parking garages should be designed to be complementary with adjacent buildings. Use similar forms, materials, and/or details to enhance garages.

vi. Parking service and storage functions should be located away from the street edge and generally not be visible from the street or sidewalks.

**d. Guidelines Applicable to Districts 'B' and 'E':**

i. Attached personal parking garages at-grade should be individualized and not enclose more than two (2) cars per enclosed space. Such garages should be architecturally integrated into the whole development.

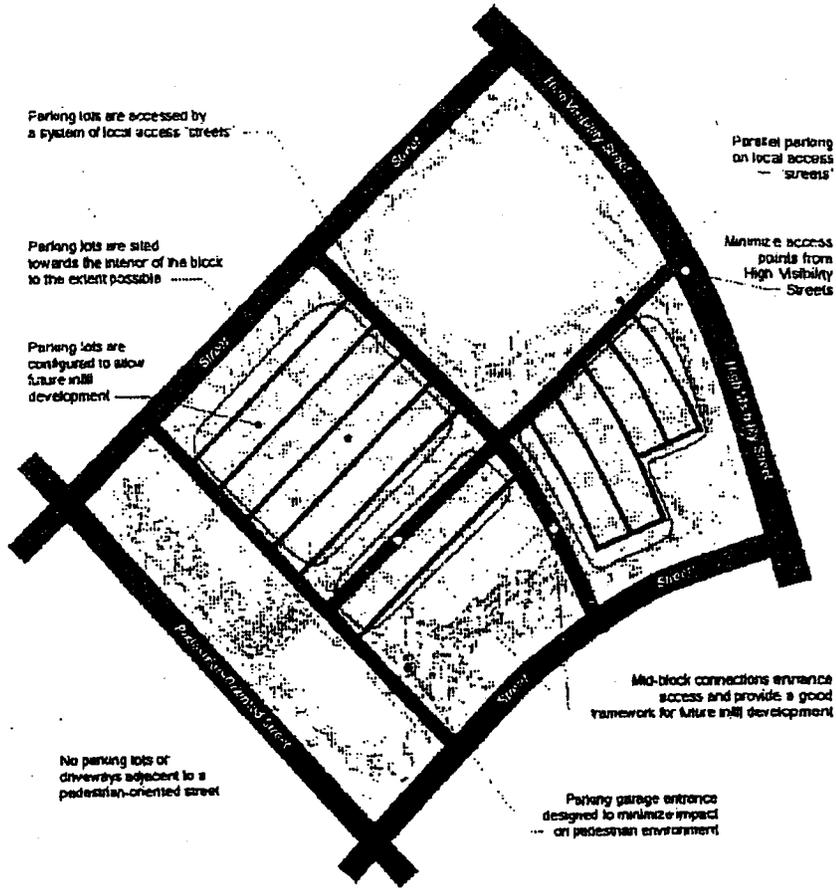
ii. Multiple-user parking garages at-grade should be enclosed or screened from view through any combination of walls, decorative grilles, or trellis work with landscaping.

iii. Personal parking garages should be individualized whenever possible with separate entries and architectural detailing in character with the lower density district.

iv. Large multi-user parking garages are discouraged in this lower density district and, if provided,

5. Illustrations.

- a. Parking and vehicular access in District 'C' (see subsection F1b(iii) of this Section).

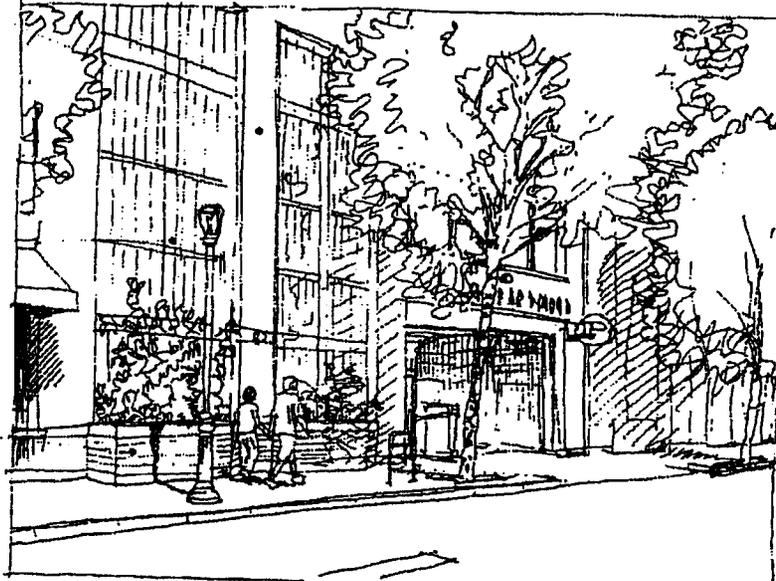


- d. Parking structure designed to enhance streetscape (see subsection F3a(ii)(c) of this Section).

Articulation of facade components to reduce scale and add visual interest

Decorative trellis structure for vines

Raised planting bed adjacent to sidewalk



(Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

**G. PEDESTRIAN ENVIRONMENT:**

**Intent:** To enhance the urban character of development in the Urban Center and the Center Village by creating pedestrian networks and by providing strong links from streets and drives to building entrances; make the pedestrian environment safer and more convenient, comfortable, and pleasant to walk between businesses, on sidewalks, to and from access points, and through parking lots; and promote the use of multi-modal and public transportation systems in order to reduce other vehicular traffic.

**1. Pathways through Parking Lots:**

**Intent:** To provide safe and attractive pedestrian connections to buildings, parking garages, and parking lots.

**a. Minimum Standards for Districts 'C' and 'D':**

- i. Clearly delineated pedestrian pathways and/or private streets shall be provided throughout parking areas.

- ii. Within parking areas, pedestrian pathways shall be provided perpendicular to the applicable building facade, at a maximum distance of one hundred and fifty feet (150') apart (see illustration, subsection G4a of this Section).

**2. Pedestrian Circulation:**

**Intent:** To create a network of linkages for pedestrians to improve safety and convenience and enhance the pedestrian environment.

**a. Minimum Standards for Districts 'A', 'C' and 'D':**

- i. Developments shall include an integrated pedestrian circulation system that connects buildings, open space, and parking areas with the adjacent street sidewalk system and adjacent properties (see illustration, subsection G4b of this Section).

- ii. Sidewalks located between buildings and streets shall be raised above the level of vehicular travel.

required walkway should be provided.

### 3. Pedestrian Amenities:

**Intent:** To create attractive spaces that unify the building and street environments and are inviting and comfortable for pedestrians; and provide publicly accessible areas that function for a variety of activities, at all times of the year, and under typical seasonal weather conditions.

#### a. Minimum Standards for District 'C':

i. On designated pedestrian-oriented streets, provide pedestrian overhead weather protection in the form of awnings, marquees, canopies, or building overhangs. These elements shall be a minimum of four and one-half feet (4-1/2') wide along at least seventy five percent (75%) of the length of the building facade facing the designated pedestrian-oriented street, a maximum height of fifteen feet (15') above the ground elevation, and no lower than eight feet (8') above ground level.

ii. Site furniture provided in public spaces shall be made of durable, vandal- and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time.

iii. Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances.

#### b. Minimum Standards for District 'D':

i. Provide pedestrian overhead weather protection in the form of awnings, marquees, canopies, or building overhangs. These elements shall be a minimum of four and one-half feet (4-1/2') wide along at least seventy five percent (75%) of the length of the building facade, a maximum height of fifteen feet (15') above the

ground elevation, and no lower than eight feet (8') above ground level.

ii. Site furniture provided in public spaces shall be made of durable, vandal- and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time.

iii. Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances.

#### c. Minimum Standards for District 'E' Only:

i. Site furniture provided in public spaces shall be made of durable, vandal- and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time.

ii. Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances.

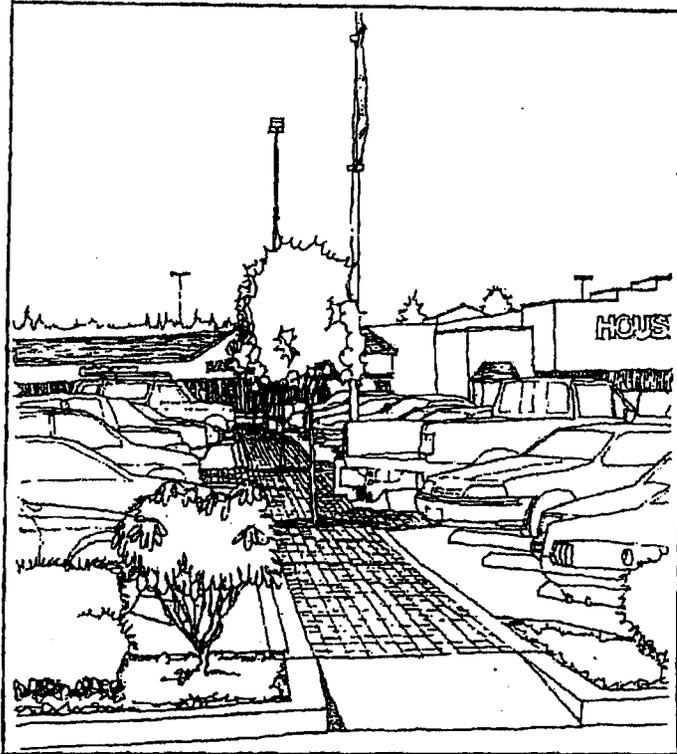
#### d. Guidelines Applicable to Districts 'C', 'D' and 'E':

i. Transit shelters, bicycle racks, benches, trash receptacles, and other street furniture should be provided.

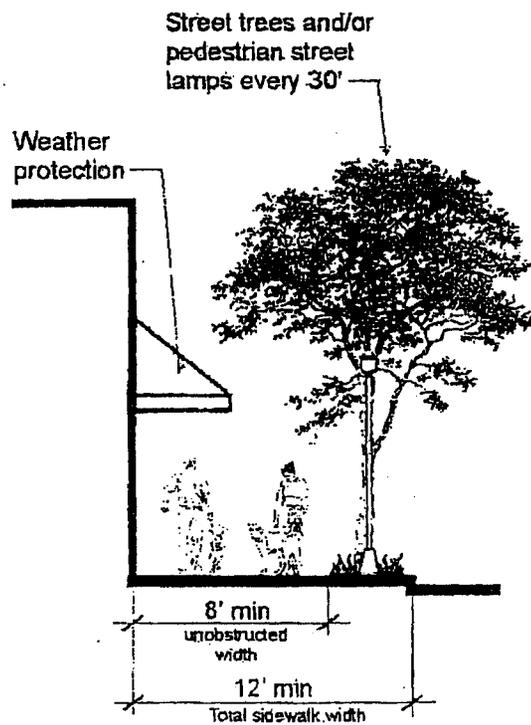
ii. Street amenities such as outdoor group seating, kiosks, fountains, and public art should be provided.

iii. Architectural elements that incorporate plants, such as facade-mounted planting boxes or trellises or ground-related or hanging containers are encouraged, particularly at building entrances, in publicly accessible spaces, and at facades along pedestrian-oriented streets (see illustration, subsection G4f of this Section).

c. Parking lot pedestrian interior walkway (see subsection G2a(iii) of this Section).



d. Sidewalks along retail building facade (see subsection G2a(iv)(a) of this Section).



ular circulation; and add to the aesthetic enjoyment of the area by the community.

**a. Minimum Standards for All Districts:**

i. All pervious areas shall be landscaped (see RMC 4-4-070, Landscaping).

ii. Street trees are required and shall be located between the curb edge and building, as determined by the City of Renton.

iii. On designated pedestrian-oriented streets, street trees shall be installed with tree grates. For all other streets, street tree treatment shall be as determined by the City of Renton (see illustration, subsection H3a of this Section).

iv. The proposed landscaping shall be consistent with the design intent and program of the building, the site, and use.

v. The landscape plan shall demonstrate how the proposed landscaping, through the use of plant material and nonvegetative elements, reinforces the architecture or concept of the development.

vi. Surface parking areas shall be screened by landscaping in order to reduce views of parked cars from streets (see RMC 4-4-080F7, Landscape Requirements). Such landscaping shall be at least ten feet (10') in width as measured from the sidewalk (see illustration, subsection H3b of this Section). Standards for planting shall be as follows:

(a) Trees at an average minimum rate of one tree per thirty (30) lineal feet of street frontage. Permitted tree species are those that reach a mature height of at least thirty five feet (35'). Minimum height or caliper at planting shall be eight feet (8') or two inch (2'') caliper (as measured four

feet (4') from the top of the root ball) respectively.

(b) Shrubs at the minimum rate of one per twenty (20) square feet of landscaped area. Shrubs shall be at least twelve inches (12'') tall at planting and have a mature height between three feet (3') and four feet (4').

(c) Ground cover shall be planted in sufficient quantities to provide at least ninety percent (90%) coverage of the landscaped area within three (3) years of installation.

(d) The applicant shall provide a maintenance assurance device, prior to occupancy, for a period of not less than three (3) years and in sufficient amount to ensure required landscape standards have been met by the third year following installation.

(e) Surface parking with more than fourteen (14) stalls shall be landscaped as follows:

**(1) Required Amount:**

Total Number of Spaces	Minimum Required Landscape Area*
15 to 50	15 square feet/parking space
51 to 99	25 square feet/parking space
100 or more	35 square feet/parking space

\* Landscape area calculations above and planting requirements below exclude perimeter parking lot landscaping areas.

(2) Provide trees, shrubs, and ground cover in the required interior parking lot landscape areas.

(3) Plant at least one tree for every six (6) parking spaces. Permitted tree species are those that reach a mature height of at least thirty five feet (35'). Minimum height or caliper at planting shall be eight feet (8') or two inch (2'') caliper (as measured four

ing elements for developments having more than one hundred (100) units.

- (a) Courtyards, plazas, or multi-purpose open spaces;
- (b) Upper level common decks, patios, terraces, or roof gardens. Such spaces above the street level must feature views or amenities that are unique to the site and are provided as an asset to the development;
- (c) Pedestrian corridors dedicated to passive recreation and separate from the public street system;
- (d) Recreation facilities including, but not limited to, tennis/sports courts, swimming pools, exercise areas, game rooms, or other similar facilities; or
- (e) Children's play spaces.

ii. In mixed use residential and attached residential projects, required landscaping, driveways, parking, or other vehicular use areas shall not be counted toward the common space requirement or be located in dedicated outdoor recreation or common use areas.

iii. In mixed use residential and attached residential projects required yard setback areas shall not count toward outdoor recreation and common space unless such areas are developed as private or semi-private (from abutting or adjacent properties) courtyards, plazas or passive use areas containing landscaping and fencing sufficient to create a fully usable area accessible to all residents of the development (see illustration, subsection H3c of this Section).

iv. Private decks, balconies, and private ground floor open space shall not count toward the common space/recreation area requirement.

v. In mixed use residential and attached residential projects, other required landscaping and sensitive area buffers without common access links, such as pedestrian trails, shall not be included toward the required recreation and common space requirement.

vi. All buildings and developments with over thirty thousand (30,000) square feet of nonresidential uses (excludes parking garage floorplate areas) shall provide pedestrian-oriented space (see illustration, subsection H3d of this Section) according to the following formula:

1% of the lot area + 1% of the building area = Minimum amount of pedestrian-oriented space

vii. To qualify as pedestrian-oriented space, the following must be included:

- (a) Visual and pedestrian access (including barrier-free access) to the abutting structures from the public right-of-way or a nonvehicular courtyard;
- (b) Paved walking surfaces of either concrete or approved unit paving;
- (c) On-site or building-mounted lighting providing at least four (4) foot-candles (average) on the ground; and
- (d) At least three feet (3') of seating area (bench, ledge, etc.) or one individual seat per sixty (60) square feet of plaza area or open space.

viii. The following features are encouraged in pedestrian-oriented space (see illustration, subsection H3e of this Section) and may be required by the Director:

- (a) Provide pedestrian-oriented uses on the building fa-

(d) Talbot Road S.

vi. Puget Area: Intersection of S. Puget Drive and Benson Road S.

vii. Rainier Avenue Area: Intersections with Rainier Avenue S. at:

(a) Airport Way / Renton Avenue S.;

(b) S. Second Street;

(c) S. Third Street / S.W. Sunset Boulevard;

(d) S. Fourth Street; and

(e) S. Seventh Street.

viii. North Renton Area: Intersections with Park Avenue N. at:

(a) N. Fourth Street; and

(b) N. Fifth Street.

ix. Northeast Sunset Area: Intersections with N.E. Sunset Boulevard at:

(a) Duvall Avenue N.E.; and

(b) Union Avenue N.E.

**e. Guideline Applicable to Districts 'A', 'C' and 'D':**

i. Common space areas in mixed use residential and attached residential projects should be centrally located so they are near a majority of dwelling units, accessible and usable to residents, and visible from surrounding units.

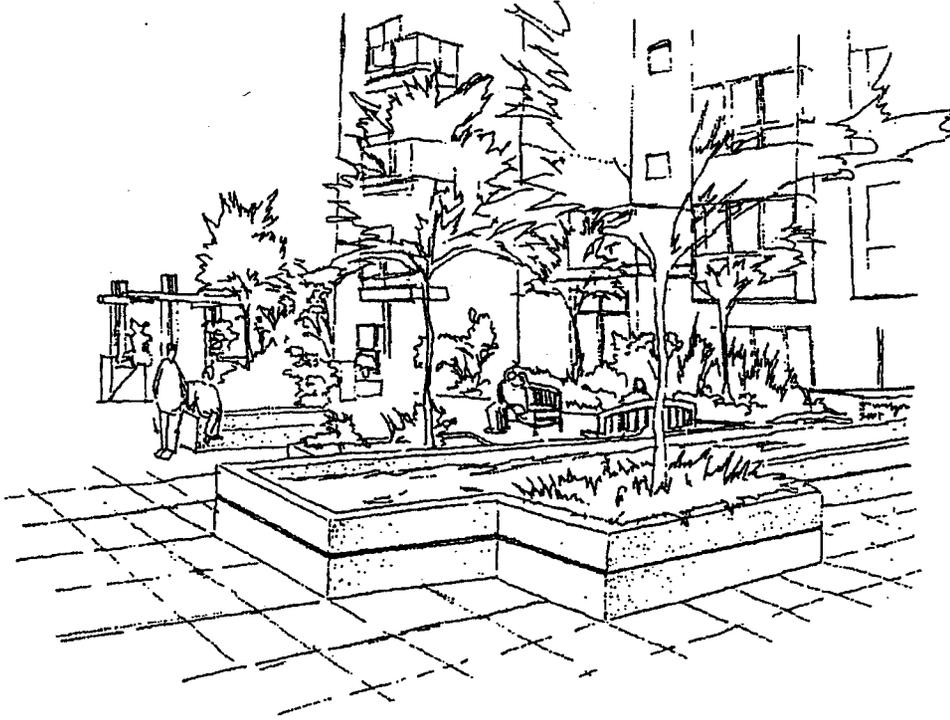
ii. Common space areas should be located to take advantage of surrounding features such as building entrances, significant landscaping, unique topography or architecture, and solar exposure.

iii. In mixed use residential and attached residential projects children's play space should be centrally lo-

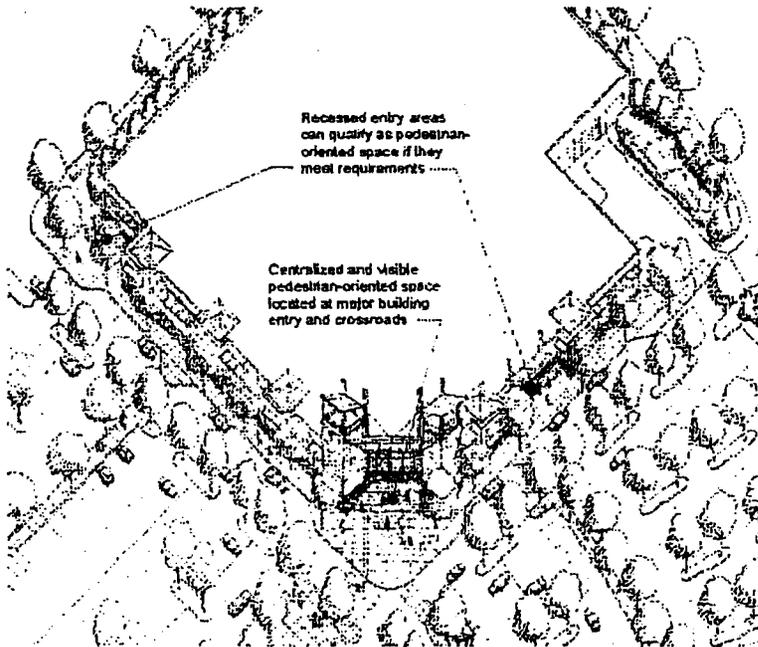
cated, visible from the dwellings, and away from hazardous areas like garbage dumpsters, drainage facilities, streets, and parking areas.

**f. Guideline Applicable to District 'C':** Developments located at street intersections corners on designated pedestrian-oriented streets are encouraged to provide pedestrian-oriented space adjacent to the street corner to emphasize pedestrian activity (see illustration, subsection H3f of this Section).

c. Visible and accessible common area featuring landscaping and other amenities (see subsection H2a(iii) of this Section).



d. Pedestrian-oriented space associated with a large-scale retail building (see subsection H2a(vi) of this Section).



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ii. **Style:** Buildings should be urban in character.

iii. Buildings greater than one hundred and sixty feet (160') in length should provide a variety of techniques to reduce the apparent bulk and scale of the facade or provide an additional special design feature such as a clock tower, courtyard, fountain, or public gathering place to add visual interest (see illustration, subsection 15c of this Section).

## 2. Ground-Level Details:

**Intent:** To ensure that buildings are visually interesting and reinforce the intended human-scale character of the pedestrian environment; and ensure that all sides of a building within near or distant public view have visual interest.

### a. Minimum Standards for All Districts:

i. Untreated blank walls visible from public streets, sidewalks, or interior pedestrian pathways are prohibited. A wall (including building facades and retaining walls) is considered a blank wall if:

(a) It is a ground floor wall or portion of a ground floor wall over six feet (6') in height, has a horizontal length greater than fifteen feet (15'), and does not include a window, door, building modulation or other architectural detailing; or

(b) Any portion of a ground floor wall having a surface area of four hundred (400) square feet or greater and does not include a window, door, building modulation or other architectural detailing.

ii. Where blank walls are required or unavoidable, blank walls shall be treated with one or more of the following (see illustration, subsection 15d of this Section):

(a) A planting bed at least five feet (5') in width containing trees, shrubs, evergreen ground cover, or vines adjacent to the blank wall;

(b) Trellis or other vine supports with evergreen climbing vines;

(c) Architectural detailing such as reveals, contrasting materials, or other special detailing that meets the intent of this standard;

(d) Artwork, such as bas-relief sculpture, mural, or similar; or

(e) Seating area with special paving and seasonal planting.

iii. Treatment of blank walls shall be proportional to the wall.

iv. Provide human-scaled elements such as a lighting fixture, trellis, or other landscape feature along the facade's ground floor.

v. Facades on designated pedestrian-oriented streets shall have at least seventy five percent (75%) of the linear frontage of the ground floor facade (as measured on a true elevation facing the designated pedestrian-oriented street) comprised of transparent windows and/or doors.

vi. Other facade window requirements include the following:

(a) Building facades must have clear windows with visibility into and out of the building. However, screening may be applied to provide shade and energy efficiency. The minimum amount of light transmittance for windows shall be fifty percent (50%).

(b) Display windows shall be designed for frequent change of merchandise, rather than permanent displays.

iv. Match color of roof-mounted mechanical equipment to color of exposed portions of the roof to minimize visual impacts when equipment is visible from higher elevations. (Ord. 5355, 2-25-2008)

**b. Guidelines Applicable to Districts 'B' and 'E':**

i. Buildings containing predominantly residential uses should have pitched roofs with a minimum slope of one to four (1:4). Such roofs should have dormers or intersecting roof forms that break up the massiveness of a continuous, uninterrupted sloping roof.

ii. Roof colors should be dark.

**c. Guideline Applicable to District 'C':** Building roof lines should be varied to add visual interest to the building.

**4. Building Materials:**

**Intent:** To ensure high standards of quality and effective maintenance over time; encourage the use of materials that reduce the visual bulk of large buildings; and encourage the use of materials that add visual interest to the neighborhood.

**a. Minimum Standards for All Districts:**

i. All sides of buildings visible from a street, pathway, parking area, or open space shall be finished on all sides with the same building materials, detailing, and color scheme, or if different, with materials of the same quality.

ii. Materials, individually or in combination, shall have an attractive texture, pattern, and quality of detailing for all visible facades.

iii. Materials shall be durable, high quality, and reasonably maintained.

**b. Minimum Standard for Districts 'A', 'C' and 'D':** Buildings shall employ material variations such as colors, brick

or metal banding, patterns, or textural changes.

**c. Guidelines Applicable to All Districts:**

i. Building materials should be attractive, durable, and consistent with more traditional urban development. Appropriate examples would include brick, integrally colored concrete masonry, pre-finished metal, stone, steel, glass, and cast-in-place concrete.

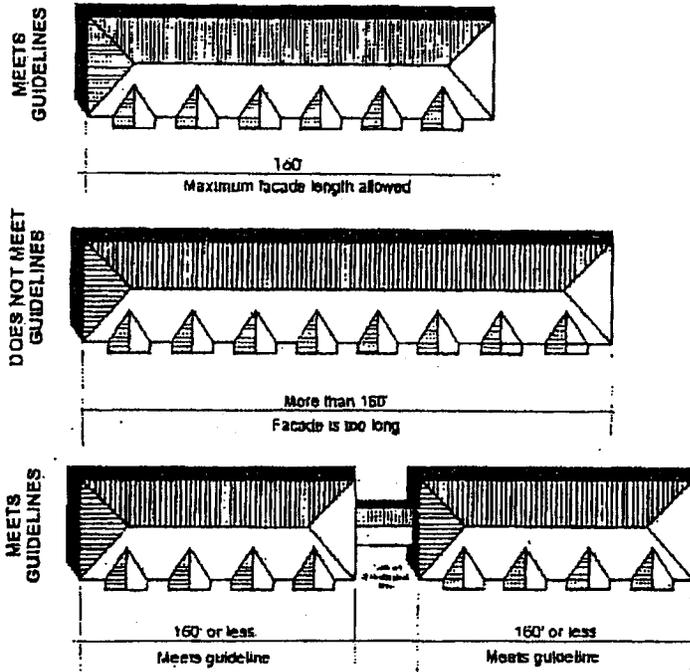
ii. Concrete walls should be enhanced by texturing, reveals, snap-tie patterns, coloring with a concrete coating or admixture, or by incorporating embossed or sculpted surfaces, mosaics, or artwork.

iii. Concrete block walls should be enhanced with integral color, textured blocks and colored mortar, decorative bond pattern and/or incorporate other masonry materials.

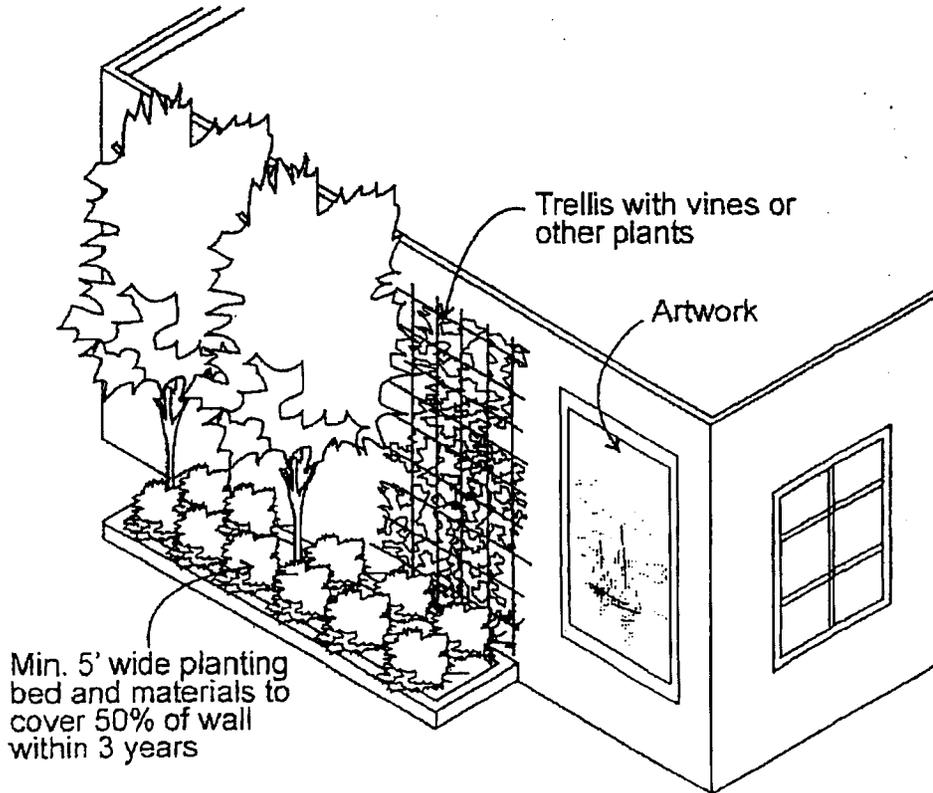
iv. Stucco and similar troweled finishes should be used in combination with other more highly textured finishes or accents. They should not be used at the base of buildings between the finished floor elevation and four feet (4') above.

**d. Guideline Applicable to Districts 'B' and 'E':** Use of material variations such as colors, brick or metal banding or patterns, or textural changes is encouraged.

c. Reducing scale of long buildings (see subsection 11g(iii) of this Section).



d. Acceptable blank wall treatments (see subsection 12a(ii) of this Section).



**J. SIGNAGE:**

**Intent:** To provide a means of identifying and advertising businesses; provide directional assistance; encourage signs that are both clear and of appropriate scale for the project; encourage quality signage that contributes to the character of the Urban Center and the Center Village; and create color and interest.

**1. Minimum Standards for Districts 'C' and 'D':**

- a. Signage shall be an integral part of the design approach to the building.
- b. Corporate logos and signs shall be sized appropriately for their location.
- c. Prohibited signs include (see illustration, subsection J3a of this Section):
  - i. Pole signs;
  - ii. Roof signs;
  - iii. Back-lit signs with letters or graphics on a plastic sheet (can signs or illuminated cabinet signs).  
Exceptions: Back-lit logo signs less than ten (10) square feet are permitted as are signs with only the individual letters back-lit.
- d. In mixed use and multi-use buildings, signage shall be coordinated with the overall building design.
- e. Freestanding ground-related monument signs, with the exception of primary entry signs, shall be limited to five feet (5') above finished grade, including support structure. All such signs shall include decorative landscaping (ground cover and/or shrubs) to provide seasonal interest in the area surrounding the sign. Alternately, signage may incorporate stone, brick, or other decorative materials as approved by the Director.
- f. Entry signs shall be limited to the name of the larger development.

**2. Guidelines Applicable to Districts 'C' and 'D':**

- a. Alteration of trademarks notwithstanding, corporate signage should not be garish in color nor overly lit, although creative design, strong accent colors, and interesting surface materials and lighting techniques are encouraged.
- b. Front-lit, ground-mounted monument signs are the preferred type of freestanding sign.
- c. Blade type signs, proportional to the building facade on which they are mounted, are encouraged on pedestrian-oriented streets.

- b. Additional lighting to provide interest in the pedestrian environment may include sconces on building facades, decorative street lighting, etc. (Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5472, 7-13-2009)

**L. MODIFICATION OF MINIMUM STANDARDS:**

1. The Reviewing Official shall have the authority to modify the minimum standards of the design regulations, subject to the provisions of RMC 4-9-250D, Modification Procedures, and the following requirements:

- a. The project as a whole meets the intent of the minimum standards and guidelines in subsections E, F, G, H, I, J, and K of the design regulations;
- b. The requested modification meets the intent of the applicable design standard;
- c. The modification will not have a detrimental effect on nearby properties and the City as a whole;
- d. The deviation manifests high quality design; and
- e. The modification will enhance the pedestrian environment on the abutting and/or adjacent streets and/or pathways.

2. Exceptions for Districts 'A' and 'B': Modifications to the requirements in subsections E2a and E3a of this Section are limited to the following circumstances:

- a. When the building is oriented to an interior courtyard, and the courtyard has a prominent entry and walkway connecting directly to the public sidewalk; or
- b. When a building includes an architectural feature that connects the building entry to the public sidewalk; or
- c. In complexes with several buildings, when the building is oriented to an internal integrated walkway system with prominent connections to the public sidewalk(s). (Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

**M. VARIANCE:**

(Reserved). (Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

**N. APPEALS:**

For appeals of administrative decisions made pursuant to the design regulations, see RMC 4-8-110, Appeals. (Ord. 4821, 12-20-1999; Armd. Ord. 4971, 6-10-2002; Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

**4-3-105 (Deleted by Ord. 4992, 12-9-2002)**

**4-3-110 URBAN SEPARATOR OVERLAY REGULATIONS:**

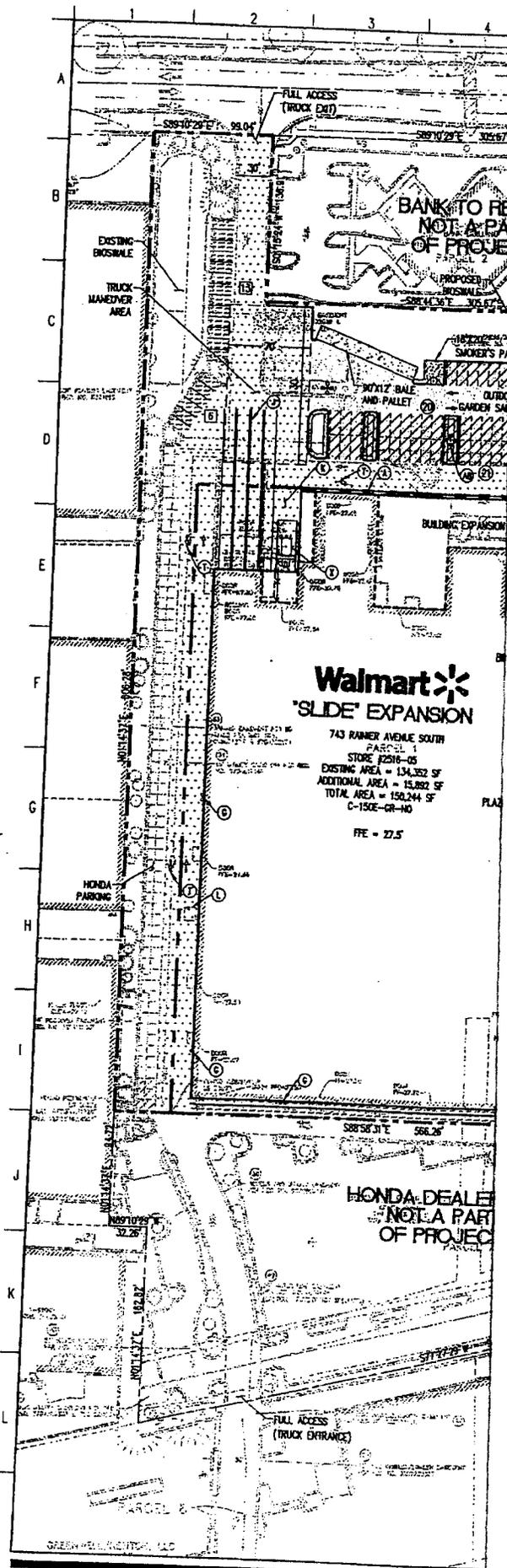
**A. PURPOSE:**

The purpose of this Section is to implement the urban separators policies in the Community Design Element of the Comprehensive Plan and the King County Countywide Planning Policies. The intent is to provide physical and visual distinctions between Renton and adjacent communities, define Renton's boundaries and create contiguous open space corridors within and between urban communities, which provide environmental, visual, recreational and wildlife benefits. Urban separators shall be permanent low-density lands that protect resources and environmentally sensitive areas. (Ord. 5132, 4-4-2005)

**B. APPLICABILITY:**

This Section shall apply to subdivisions and building permits on lands within designated urban separators as shown in the urban separators maps. (Ord. 5132, 4-4-2005)

## **APPENDIX C**



**SITE PLAN NOTES**

1. ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY/COUNTY REGULATIONS AND CODES AND O.S.H.A. STANDARDS.
2. THE DESIGN SHOWN IS BASED UPON THE ENGINEER'S UNDERSTANDING OF THE EXISTING CONDITIONS. THIS PLAN DOES NOT REPRESENT A DETAILED FIELD SURVEY. THE EXISTING CONDITIONS SHOWN ON THIS PLAN SHEET ARE BASED UPON SURVEY PREPARED BY BUSH, ROED & HITCHINGS, SIGNED 01-06-2010. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING FIELD CONDITIONS PRIOR TO BIDDING THE PROPOSED SITEWORK IMPROVEMENTS. IF CONFLICTS ARE DISCOVERED, THE CONTRACTOR SHALL NOTIFY THE OWNER PRIOR TO INSTALLATION OF ANY PORTION OF THE SITEWORK WHICH WOULD BE AFFECTED. IF THE CONTRACTOR DOES NOT ACCEPT EXISTING SURVEY, INCLUDING TOPOGRAPHY AS SHOWN ON THE PLANS, WITHOUT EXCEPTION, HE SHALL HAVE MADE, AT HIS OWN EXPENSE, A TOPOGRAPHIC SURVEY BY A REGISTERED LAND SURVEYOR AND SUBMIT IT TO THE OWNER FOR REVIEW.
3. **CAUTION - NOTICE TO CONTRACTOR**  
THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON RECORDS OF THE VARIOUS UTILITIES, AND WHERE POSSIBLE, MEASUREMENTS TAKEN IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. THE CONTRACTOR MUST CALL THE APPROPRIATE UTILITY COMPANY AT LEAST 48 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATION OF UTILITIES. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO RELOCATE ALL EXISTING UTILITIES AND EXISTING IMPROVEMENTS WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS ON THE PLANS.
4. CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF VESTIBULES, SLOPE PAVING, SIDEWALKS, EXIT PORCHES, TRUCK DOCKS, PRECISE BUILDING DIMENSIONS AND EXACT BUILDING UTILITY ENTRANCE LOCATIONS. CONTRACTOR SHALL CONFORM TO ALL FEDERAL, STATE, AND CITY A.I.A. REQUIREMENTS.
5. ALL DISTURBED AREAS ARE TO RECEIVE FOUR INCHES OF TOPSOIL, SEED, MULCH AND WATER UNTIL A HEALTHY STAND OF GRASS IS ESTABLISHED. SEE LANDSCAPE PLANS AND NOTES.
6. ALL ISLANDS WITH CURB & CUTTER SHALL BE LANDSCAPED. THOSE ISLANDS ARE TO HAVE 18" CURB & CUTTER (6" CURB, 1" CUTTER). ALL REMAINING ISLANDS ARE TO BE STRIPPED AS SHOWN.
7. CURB RAIN ADJACENT TO PARKING STALLS SHALL BE 2". ALL OTHER CURB-RAIN SHALL BE 10", UNLESS OTHERWISE NOTED. STRIPPED RAIN ARE TO BE 5".
8. DIMENSIONS SHOWN REFER TO FACE OF CURB, FACE OF BUILDING OR TO THE CENTERLINE OF PAVEMENT STRIPING, UNLESS OTHERWISE NOTED.
9. EXISTING STRUCTURES WITHIN CONSTRUCTION LIMITS ARE TO BE ABANDONED, REMOVED OR RELOCATED AS NECESSARY. ALL COST SHALL BE INCLUDED IN BASE BID.
10. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL RELOCATIONS, INCLUDING BUT NOT LIMITED TO, ALL UTILITIES, STORM DRAINAGE SIGNS, TRAFFIC SIGNALS & POLES, ETC. AS REQUIRED. ALL WORK SHALL BE IN ACCORDANCE WITH GOVERNING AUTHORITIES' SPECIFICATIONS AND SHALL BE APPROVED BY SUCH. ALL COST SHALL BE INCLUDED IN BASE BID.
11. CONTRACTOR SHALL PROVIDE A TEMPORARY TRAFFIC CONTROL PLAN FOR THE CITY ENGINEER'S APPROVAL PRIOR TO ANY WORK WITHIN THE CITY RIGHT-OF-WAY.
12. FIRE LANE STRIPING AROUND BUILDING PERIMETER AND ALONG FIRE TRUCK ACCESS WAYS SHALL BE INSTALLED AS PART OF THIS CONTRACT, IN ACCORDANCE WITH THE LOCAL CODE AND FIRE MARSHAL REQUIREMENTS.
13. REFER TO BOUNDARY SURVEY FOR LEGAL DESCRIPTION, DIMENSIONS OF PROPERTY LINES, BASIS OF BEARINGS & BENCHMARK INFORMATION. (SEE SHEETS CS-1, CS-2, CS-3)
14. ALL NEW ON-SITE PAINTED STRIPING SHALL BE DOUBLE COATED. SEPARATE COATS SHALL BE APPLIED NO SOONER THAN 4 HOURS APART. (CONTRACTOR TO REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL PAVING MARKING REQUIREMENTS.) PARKING LOT STRIPING SHALL BE YELLOW, 4" WIDTH, & DOUBLE COATED, UNLESS OTHERWISE NOTED. LIGHT POLE BASES TO BE PAINTED TRAFFIC YELLOW (DOUBLE COAT). EXISTING STRIPING TO REMAIN TO RECEIVE ONE COAT.
15. THE SITE WORK FOR THIS PROJECT SHALL MEET OR EXCEED "THE WALMART STANDARD SITE WORK SPECIFICATIONS".
16. MONUMENT SIGNS SHALL BE INSTALLED BY OTHERS. THE CONTRACTOR SHALL INSTALL CONDUIT AND ELECTRICAL CIRCUIT BETWEEN THE SIGN(S) AND THE LIGHTING PANEL IF NECESSARY.
17. REFER TO ARCH PLANS FOR SITE LIGHTING AND ELECTRICAL PLANS.
18. REFER TO SHEET C-8.1 FOR CONCRETE JOINTING DETAILS.
19. ASPHALT FOG SEAL COAT TO BE APPLIED IN ALL EXISTING PARKING AREAS WHICH WILL NOT RECEIVE AN OVERLAY OR NEW SECTION.

**SITE DATA**

EXISTING LEASE AREA	= 9.8 AC
PROPOSED LEASE AREA	= 13.6 AC ±
LAND USE CLASSIFICATION	= COMMERCIAL/IND. INDUSTRIAL
ZONE	= CA (COMMERCIAL ARTERIAL) = M (INDUSTRIAL MEDIUM)
LOCAL JURISDICTION	= CITY OF RENTON, WA
FLOOD ZONE CLASSIFICATION	= ZONE X

EXISTING SITE ANALYSIS TABLE	
WALMART PARKING ACCESSIBLE	134,352 SF
CART CORRALS	618 STALLS
RATIO	25 STALLS / 10 DOUBLE / 4.8 / 1000 GSF
*COUNT INCLUDES ACCESSIBLE SPACES AND SPACES USED BY CART CORRALS	
PROPOSED SITE ANALYSIS TABLE	
WALMART PARKING ACCESSIBLE	150,244 SF
CART CORRALS	745 STALLS
RATIO	19 STALLS / 14 DOUBLE / 5.0 / 1000 GSF
*COUNT INCLUDES ACCESSIBLE SPACES AND SPACES USED BY CART CORRALS	

**PARKING DATA**

EXISTING BUILDING TOTAL	= 134,352 SF
EXISTING PARKING TOTAL	= 618 STALLS
EXISTING WALMART PARKING RATIO	= 4.8 PER 1,000 SF
<b>AFTER EXPANSION PARKING PROVIDED:</b>	
STANDARD (9.0' WIDE)	= 658 STALLS
COMPACT (8.5' X 10')	= 68 STALLS
ACCESSIBLE	= 19 STALLS
MEDIAN AGE = 35 YEARS	
TOTAL PARKING	= 745 STALLS
WALMART PARKING RATIO	= 5.0 PER 1,000 SF
CART CORRALS	14 CORRALS (28 STALLS)
CITY OF RENTON PARKING RATIO	= MAX 5.0 PER 1,000 SF

BUILDING DATA	
EXISTING BUILDING	= 134,352 SF
EXPANSION	= 15,892 SF
WALMART TOTAL	= 150,244 SF

LANDSCAPING DATA	
LANDSCAPING REQUIREMENTS	= 35 SF PER STALL
AREA REQUIRED	= 26,075 SF
AREA PROVIDED	= 29,922 SF

**LEGEND**

- STD. DUTY PAVEMENT
- HEAVY DUTY OVERLAY
- CONCRETE PAVEMENT
- CONCRETE SIDEWALK PAVEMENT
- VARIABLE DEPTH REPAIR/REPLACE/OVERLAY
- PAVEMENT PER ARCH PLANS
- CONCRETE CURB & CUTTER
- PIPE BOLLARD
- NUMBER OF PARKING STALLS PER ROW, YELLOW STRIPING
- NON-WALMART PARKING STALLS
- SEASONAL OUTDOOR GARDEN SALES AREA
- NUMBER OF ASSOCIATE PARKING STALLS PER ROW
- DENOTES COMPACT STALL
- NEW WALMART PARKING AREA STRIPING
- EXISTING WALMART PARKING STRIPING TO BE RESTRIPTED, ONE COAT
- CHAIN LINK FENCE WITH GATE
- CART CORRAL
- AISLE MARKER SIGN
- SANICUT
- LOT LINE
- LOT LINE TO BE REMOVED

**APPENDIX C**

CP 670

No.	Date	By	Revision Description
1	4/14/2010	PACLAND	SITE PLAN REVISION

SPR SITE PLAN

SPR-1.0

S:\Washington\Renton\grimes\Rainier Ave & 7th Expansion\20RAHWGOS\Archive\2010-02-08 Site Plan Review Submittal\PNCR1105.dwg Apr 14, 2010 - 4:32pm

## **APPENDIX D**

<u>Exhibit No. 3: Site Plan</u>	<u>Exhibit No. 4: Landscape Plan</u>
<u>Exhibit No. 5: Tree Inventory Plan</u>	<u>Exhibit No. 6: East and West Elevations</u>
<u>Exhibit No. 7: North and South Elevations</u>	<u>Exhibit No. 8: Large Page Short Plat Plan (9 pages)</u>

The hearing opened with a presentation of the staff report by Rocale Timmons Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The site is located just west of Rainier Avenue S and Hardie Avenue SW between SW 7<sup>th</sup> Street and S Grady Way. The site is 13.6 acres and is zoned Commercial Arterial and is located within the Commercial Land Use Designation.

The applicant is proposing an expansion of the existing Walmart retail facility in the amount of 16,000 square feet. The applicant is further proposing a reduction in the Garden Center from 9,000 square feet to approximately 4,000 square feet. An area would be set aside just north of the expansion area for outdoor retail sales.

The Examiner questioned conforming or non-conforming, parking is an example of non-conforming as well as other aspects of the project. Can a legal non-conforming use be expended under the Code?

Ms. Timmons stated that as long as it is not more than a 50% expansion; with relation to the parking stalls there are approximately 618 existing, the applicant is proposing only 127 new parking stalls.

The applicant is proposing improvements to existing landscaping, lighting and drainage from the site.

Access would continue via the current curb cuts along the perimeter streets.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with 6 measures. No appeals were filed.

The project does comply with all policies within the Commercial Corridor Comprehensive Plan designation. The project is located within the Commercial Arterial Zoning designation and this project is permitted within this zone. Lot coverage for this site is limited to 65%, the applicant is proposing 840,000 square foot footprint on the site, which results in a lot coverage of 25.3%. CA zone requires a 10-foot minimum front yard setback with a maximum 15-foot setback. There are no other setbacks required in this zone. The front yard setback would be assessed from Hardie Avenue SW and Rainier Avenue S. The proposal does not comply with the maximum front yard setback; however the expansion does increase the conformity of the project in that it moves closer towards Hardie Ave SW and Rainier Ave S, which then does not require a variance.

A short plat was recently approved for the site which would allow Walmart to site structure on its own building pad. The short plat has not been recorded and this must be done.

Height in the CA zone is limited to 50 feet; the applicant has proposed a maximum height of 32' 4". The applicant has provided various roof shapes and heights along the eastern façade to break up the massing of the structure.

There are 99 existing trees on site; the applicant proposes to remove 15 trees. Mature vegetation on site should be retained as much as possible. The existing parking layout presented a challenge to the layout; the spacing of the landscape islands could not be reorganized. The CA zone requires a 10-foot landscape strip along all street

Jack McCullough, McCullough & Hill, 701 5<sup>th</sup> Avenue, Ste. 7220, Seattle, WA 98104 stated that the applicant looked at a larger expansion, the site is very tight and decided that they could not make it work. The proposal presented today seems appropriate for the site.

There has been a lot of attention to the landscaping, some of the planters have been expanded rather than building more landscape bays. The parking requirements of the code do create a range within which the project must fall, one is to look at code compliance for this project and then looking at parking from a demand point of view. The 745 stalls proposed for this site are necessary in order to provide an adequate level of parking to support this facility.

Jeff Chambers, PACLAND, 1505 Westland Ave N, Ste. 305, Seattle, WA 98109 stated he wanted to discuss some of the items previously brought forward.

In relation to landscaping, during the discussions with staff they expressed interest in definitely keeping as many of the mature trees as possible on the site. The current sidewalk is approximately 3-4 feet wide, that walkway would be widened out and some compact stalls were created in that location. The landscape islands went from approximately six feet wide to approximately 12 feet wide. Rather than adding additional islands to the site, which constrains the stall size, they agreed with staff to expand the existing islands to 10-12 feet wide. By doing that they do meet all code requirements. Some parking stalls were lost along Hardie with the proposed new landscaping. Other parking stalls were lost with the additional landscaping along 7<sup>th</sup>, which was part of the request from staff.

The proposed trash compactor is widely used by many large stores and has been working very efficiently in those facilities. In addition to the compactor there is a bale and pallet area for additional storage.

The existing 40-foot lights give a more uniformed lighting level across the site. Industry standard encourages parking areas around four foot candles and front of store areas around 10-foot candles. The current parking lot meets that uniformity. When 25-foot lights are used the spacing ends up about 50-feet apart, the uniformity of the lighting goes from one foot candle to about 8-9 foot candles throughout the parking lot. This creates a bigger safety concern with lighting being too bright and too dark. The number of lighting standards would increase, there would be more conduits and circuits added to the parking lot. The only lights being added to this site are in the area where the Billy McHale's restaurant was located.

Usunobun Osagie, Larry D. Craighead Architects, 211 N Record Street, Ste. 222, Dallas, TX 75202 stated that they would be able to make the suggested changes to the façade with a variety of colors for a more pleasant look.

The refuse area will meet the screening requirements as well as gates and a roof on the compactor area. The design of this area does allow for a portion of the roof to remain open for ventilation. They will continue to work with staff to create a workable resolution in regards to the elevation, providing pedestrian amenities and finalize a workable solution that will make everyone happy. They want the City to be happy with this expansion.

Jack McCullough stated that they were going to take an existing facility that is non-conforming in some respects and make it better. Code does not require full conformance. They are consistently working with staff to make the project better.

Kayren Kittrick, Community and Economic Development stated that most utilities were covered under the Short Plat. All the issues regarding storm drains etc have been worked out to the City's satisfaction. It is still subject to final review and permitting.

13. The subject site contains 99 significant trees. Code requires 10% of the trees be retained. The applicant proposes removing 5 coniferous trees and 10 deciduous trees or 15 trees in total. The trees that would be removed are in the expansion areas north and east of the main building. Additional landscaping is proposed (see below).
14. Access to the subject site will be unchanged.
15. The applicant proposes remodeling and expanding the existing Walmart complex. The existing complex contains approximately 134,352 square feet of retail space along with 9,000 square feet in its garden center. The applicant proposes adding 16,000 square feet to the store and reducing its garden space to 5,000 square feet. The expansion will occur in five areas. There will be two expansion areas along the eastern or front facade near the main entrance and near the southeast corner of the front facade. The other additions will be a large area along the north facade near its northeast corner and two smaller additions near the northwest corner of the building. The applicant also proposes adding 127 additional parking stalls to its complement of 618 stalls for a total of 745 stalls.
16. The applicant proposes changes to its front or eastern facade to provide more visual interest. The applicant will remodel the inside of the store as part of its proposed expansion and modification. There will be two entrances into the store from the east. The two entrances will generally divide access to the general merchandize areas and the grocery areas of the store. The entrances will be defined by parapet rooflines that curve in wing-like facades with clerestory windows on either side of a larger curving central entrance wall with a focal point niche containing a larger tree alcove. These vestibule areas would contain seating and trash cans. The roofline will rise to approximately 32 feet 4 inches.
17. The applicant will be redeveloping the garden area to contain more retail space. The new garden center will be located along the northern end of the eastern facade. The roofline along the north will be 21 feet 4 inches matching the existing roofline or that facade's tallest extreme.
18. The applicant requested and was granted a modification to allow a smaller than required refuse and recycling area due to its proposed use of an efficient, high volume compactor unit. These units have been demonstrated to handle waste/recycling materials in other locations. The unit will be located in an area away from public areas of the subject site. The screening details were not submitted for this aspect of the proposal.
19. The facade treatment includes additional modulations, the changes in the height of elements along eastern roofline as well as a mix of facade materials. Lighting is also proposed to add to visual interest around the prominent facades. Staff recommended additional elements be added to enhance the appearance and feel of the building for pedestrians on the subject site. In addition, staff wanted the applicant to submit materials boards to verify the quality and appearance features of the exterior treatments.
20. The CA 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 Hardie-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 setbacks on the north, west and south are respectively 150 feet, 65 feet and 15 feet. Yard coverage of 65 percent is permitted whereas the proposed coverage is 25.3 percent meeting code requirements. The proposed maximum height of 32 feet 4 inches meets the height limit of the CA Zone's 50 feet.

meets the intent of the Design Regulations on the basis of individual merit if all conditions of approval are met.

<b>A. SITE DESIGN AND BUILDING LOCATION:</b>	
Intent: To ensure that buildings are located in relation to streets and other buildings so that the Vision of the City of Renton can be realized for a high-density urban environment; so that businesses enjoy visibility from public rights-of-way; and to encourage pedestrian activity throughout the district.	
<b>1. Site Design and Street Pattern:</b>	
Intent: To ensure that the City of Renton Vision can be realized within the Urban Center Districts; plan districts that are organized for efficiency while maintaining flexibility for future development at high urban densities and intensities of use; create and maintain a safe, convenient network of streets of varying dimensions for vehicle circulation; and provide service to businesses.	
N/A	Minimum Standard: Provide a network of public and/or private local streets in addition to public arterials.
N/A	Minimum Standard: Maintain a hierarchy of streets to provide organized circulation that promotes use by multiple transportation modes and to avoid overburdening the roadway system. The hierarchy shall consist of (from greatest in size to smallest): (a) High Visibility Street. A highly visible arterial street that warrants special design treatment to improve its appearance and maintain its transportation function. (b) Arterial Street. A street classified as a principal arterial on the City's Arterial Street Plan. (c) Pedestrian-Oriented Streets. Streets that are intended to feature a concentration of pedestrian activity. Such streets feature slow moving traffic, narrow travel lanes, on-street parking, and wide sidewalks. (d) Internal or local roads (public or private).
<b>2. Building Location and Orientation:</b>	
Intent: To ensure visibility of businesses; establish active, lively uses along sidewalks and pedestrian pathways; organize buildings in such a way that pedestrian use of the district is facilitated; encourage siting of structures so that natural light and solar access are available to other structures and open space; enhance the visual character and definition of streets within the district; provide an appropriate transition between buildings, parking areas, and other land uses and the street; and increase privacy for residential uses located near the street.	
✓	Minimum Standard: Orient buildings to the street with clear connections to the sidewalk.
✓	Minimum Standard: The front entry of a building shall not be oriented to a drive aisle, but instead a public or private street or landscaped pedestrian-only courtyard.
<b>3. Building Entries:</b>	
Intent: To make building entrances convenient to locate and easy to access, and ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district.	
✓	Minimum Standard: A primary entrance of each building shall be located on the facade facing a street, shall be prominent, visible from the street, connected by a walkway to the public sidewalk, and include human-scale elements.
N/A	Minimum Standard: Multiple buildings on the same site shall provide a continuous network of pedestrian paths and open spaces that incorporate landscaping to provide a directed view to building entries.
N/A	Minimum Standard: Ground floor units shall be directly accessible from the street or an open space such as a courtyard or garden that is accessible from the street.
✓	Minimum Standard: Secondary access (not fronting on a street) shall have weather protection at least 4-1/2 feet wide over the entrance or other similar indicator of access.
✓	Minimum Standard: Pedestrian access shall be provided to the building from property edges, adjacent lots, abutting street intersections, crosswalks, and transit stops.
<b>4. Transition to Surrounding Development:</b>	

	<i>Rainier Ave S/SR 167. The applicant is proposing to add a total of 127 additional parking stalls of which most would be located to the north of the proposed expansion area and existing parking lot. The parking areas could have negative impacts on the pedestrian environment and the abutting properties without adequate landscape buffers. The applicant is proposing a substantial amount of interior parking lot landscaping in order to minimize to the visual impact in addition to increases in the width of landscape buffers on the perimeter of the site. Specifically perimeter landscaping along Rainier Ave S/SR 167 is proposed at a width of approximately 55 feet and SW 7<sup>th</sup> St would have a landscape strip width of approximately 20 feet. The applicant's proposal is successful in meeting the intent of the design standard to minimize the visual impact of the parking located between the building and the street.</i>
<b>2. Design of Surface Parking:</b>	
Intent: To ensure safety of users of parking areas, convenience to businesses, and reduce the impact of parking lots wherever possible.	
Not Compliant	Minimum Standard: Parking lot lighting shall not spill onto adjacent or abutting properties. <i>Staff Comment: A lighting plan was not submitted as part of the application materials, therefore staff could not verify whether or not there would be light spillover onto adjacent properties. Staff has recommended, as a condition of approval, the applicant submit a site lighting plan to be reviewed and approved by the Current Planning Project Manager prior to construction or building permit approval.</i>
✓	Minimum Standard: All surface parking lots shall be landscaped to reduce their visual impact (see RMC 4-4-080F7, Landscape Requirements).
<b>3. Structured Parking Garages: Not Applicable</b>	
<b>C. PEDESTRIAN ENVIRONMENT:</b>	
Intent: To enhance the urban character of development in the Urban Center and the Center Village by creating pedestrian networks and by providing strong links from streets and drives to building entrances; make the pedestrian environment safer and more convenient, comfortable, and pleasant to walk between businesses, on sidewalks, to and from access points, and through parking lots; and promote the use of multi-modal and public transportation systems in order to reduce other vehicular traffic.	
<b>1. Pathways through Parking Lots:</b>	
Intent: To provide safe and attractive pedestrian connections to buildings, parking garages, and parking lots.	
✓	Minimum Standard: Clearly delineated pedestrian pathways and/or private streets shall be provided throughout parking areas.
✓	Minimum Standard: Within parking areas, pedestrian pathways shall be provided perpendicular to the applicable building facade, at a maximum distance of 150 feet apart.
<b>2. Pedestrian Circulation:</b>	
Intent: To create a network of linkages for pedestrians to improve safety and convenience and enhance the pedestrian environment.	
✓	Minimum Standard: Developments shall include an integrated pedestrian circulation system that connects buildings, open space, and parking areas with the adjacent street sidewalk system and adjacent properties.
✓	Minimum Standard: Sidewalks located between buildings and streets shall be raised above the level of vehicular travel.
✓	Minimum Standard: Pedestrian pathways within parking lots or parking modules shall be differentiated by material or texture from adjacent paving materials.
✓	Minimum Standard: Sidewalks and pathways along the facades of buildings shall be of sufficient width to accommodate anticipated numbers of users. Specifically:
N/A	(a) Sidewalks and pathways along the facades of mixed use and retail buildings 100 or more feet in width (measured along the facade) shall provide sidewalks at least 12 feet in width. The walkway shall include an 8 foot minimum unobstructed walking surface and street

	Minimum height or caliper at planting shall be eight feet or two inch caliper (as measured four feet from the top of the root ball) respectively.								
✓	Minimum Standard: Shrubs at the minimum rate of one per 20 square feet of landscaped area. Shrubs shall be at least 12 inches tall at planting and have a mature height between three and four feet.								
✓	Minimum Standard: Ground cover shall be planted in sufficient quantities to provide at least 90 percent coverage of the landscaped area within three years of installation.								
Not Compliant	Minimum Standard: The applicant shall provide a maintenance assurance device, prior to occupancy, for a period of not less than three years and in sufficient amount to ensure required landscape standards have been met by the third year following installation. <i>Staff Comment: Staff recommends, as a condition of approval, the applicant submit a landscape maintenance surety device for a period of no less than three years in sufficient amount as determined by the Current Planning Project Manager prior to temporary occupancy permit.</i>								
✓	Minimum Standard: Surface parking with more than 14 stalls shall be landscaped as follows: (1) Required Amount: <table border="1" data-bbox="500 825 1393 1024"> <thead> <tr> <th>Total Number of Spaces</th> <th>Minimum Required Landscape Area*</th> </tr> </thead> <tbody> <tr> <td>15 to 50</td> <td>15 square feet/parking space</td> </tr> <tr> <td>51 to 99</td> <td>25 square feet/parking space</td> </tr> <tr> <td>100 or more</td> <td>35 square feet/parking space</td> </tr> </tbody> </table>	Total Number of Spaces	Minimum Required Landscape Area*	15 to 50	15 square feet/parking space	51 to 99	25 square feet/parking space	100 or more	35 square feet/parking space
Total Number of Spaces	Minimum Required Landscape Area*								
15 to 50	15 square feet/parking space								
51 to 99	25 square feet/parking space								
100 or more	35 square feet/parking space								
✓	(2) Provide trees, shrubs, and ground cover in the required interior parking lot landscape areas.								
Not Compliant	(3) Plant at least one tree for every six parking spaces. Permitted tree species are those that reach a mature height of at least 35 feet. Minimum height or caliper at planting shall be eight feet or two inch caliper (as measured four feet from the top of the root ball) respectively. <i>Staff Comment: The applicant is proposing to retain most of the trees on site in order to maintain the mature tree cover. As a result of the preservation of the mature vegetation the existing location and spacing of landscape islands had to be maintained. Therefore the landscape spacing, which does not comply with the design requirements of the code, could not be brought into conformity. However, as the situation is existing a modification is not necessary. All new parking areas would comply with the minimum standard for tree spacing.</i>								
✓	(4) Up to 50 percent of shrubs may be deciduous.								
✓	(5) Select and plant ground cover so as to provide 90 percent coverage within three years of planting; provided, that mulch is applied until plant coverage is complete.								
✓	(6) Do not locate a parking stall more than 50 feet from a landscape area.								
✓	Minimum Standard: Regular maintenance shall be provided to ensure that plant materials are kept healthy and that dead or dying plant materials are replaced.								
Not Compliant	Minimum Standard: Underground, automatic irrigation systems are required in all landscape areas. <i>Staff Comment: An irrigation plan was not submitted as part of the application. Therefore staff recommends, as a condition of approval, the applicant submit an irrigation plan to and be approved by the Current Planning Project Manager prior to construction or building permit approval.</i>								
<b>2. Recreation Areas and Common Open Space: Not Applicable</b>									
<b>E. BUILDING ARCHITECTURAL DESIGN:</b>									
Intent: To 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. To discourage franchise									

✓	Minimum Standard: Treatment of blank walls shall be proportional to the wall.
✓	Minimum Standard: Provide human-scaled elements such as a lighting fixture, trellis, or other landscape feature along the facade's ground floor.
Not Compliant	<p>Minimum Standard: Facades on designated pedestrian-oriented streets shall have at least 75 percent of the linear frontage of the ground floor facade (as measured on a true elevation facing the designated pedestrian-oriented street) comprised of transparent windows and/or doors.</p> <p><i>Staff Comment: The applicant has not provided glazing in the amount specified along the eastern facade. However, the applicant has provided extending parapets, clerestories, canopies, ornamental lighting, pedestrian furniture and a large planter box with an iconic tree in order to break up the monotony of the large facade and provide human scale elements. Based on the limitations of altering the existing structure in addition to the many architectural features and pedestrian amenities provided staff has found that the applicant has achieved visual interest along the eastern facade for the distant public. However, additional elements could be included in the pedestrian plaza area, beneath the northern canopy that extends to south of the northern entrance, in order to reinforce the intended human-scale character of the pedestrian environment. Staff recommends, as a condition of approval, the applicant provide revised elevations for the eastern facade prior to building permit approval. The revised elevations shall include additional human scale elements in the pedestrian plaza area, beneath the northern canopy that extends to south of the northern entrance. The applicant is encouraged to include one or more of the following in order to achieve a human scale character: additional glazing, artwork and/or planting beds containing trees, shrubs, evergreen ground cover, or vines adjacent to the facade.</i></p>
	Minimum Standard: Other facade window requirements include the following:
✓	(a) Building facades must have clear windows with visibility into and out of the building. However, screening may be applied to provide shade and energy efficiency. The minimum amount of light transmittance for windows shall be 50percent.
✓	(b) Display windows shall be designed for frequent change of merchandise, rather than permanent displays.
✓	(c) Where windows or storefronts occur, they must principally contain clear glazing.
✓	(d) Tinted and dark glass, highly reflective (mirror-type) glass and film are prohibited.
<b>3. Building Roof Lines:</b>	
Intent: To ensure that roof forms provide distinctive profiles and interest consistent with an urban project and contribute to the visual continuity of the district.	
✓	<p>Minimum Standard: Buildings shall use at least one of the following elements to create varied and interesting roof profiles:</p> <p>(a) Extended parapets;          (b) Feature elements projecting above parapets;          (c) Projected cornices;          (d) Pitched or sloped roofs.</p>
✓	Minimum Standard: Locate and screen roof-mounted mechanical equipment so that the equipment is not visible within 150 feet of the structure when viewed from ground level.
✓	Minimum Standard: Screening features shall blend with the architectural character of the building, consistent with RMC 4-4-095E, Roof-Top Equipment.
Not Compliant	<p>Minimum Standard: Match color of roof-mounted mechanical equipment to color of exposed portions of the roof to minimize visual impacts when equipment is visible from higher elevations.</p> <p><i>Staff Comment: Staff recommends, as a condition of approval, the applicant match the color of the roof-mounted mechanical equipment to the color of exposed portions of the roof.</i></p>
<b>4. Building Materials:</b>	

Not Compliant	Minimum Standard: Lighting shall be provided on-site to increase security, but shall not be allowed to directly project off-site. <i>Staff Comment: See comments above</i>
Not Compliant	Minimum Standard: Pedestrian-scale lighting shall be provided, for both safety and aesthetics, along all streets, at primary and secondary building entrances, at building facades, and at pedestrian-oriented spaces. <i>Staff Comment: See comments above</i>

CONCLUSIONS:

1. The site plan ordinance provides a number of specific criteria for reviewing a site plan. Those criteria are generally represented in part by the following enumeration:
  - a. Conformance with the Comprehensive Plan;
  - b. Conformance with the Building and Zoning Codes;
  - c. Mitigation of impacts on surrounding properties and uses;
  - d. Mitigation of the impacts of the proposal on the subject site itself;
  - e. Conservation of property values;
  - f. Provision for safe and efficient vehicle and pedestrian circulation;
  - g. Provision of adequate light and air;
  - h. Adequacy of public services to accommodate the proposed use;

The proposed use satisfies these and other particulars of the ordinance.

2. The proposal is appropriate given either the "employment area valley" or "commercial corridor" goals and policies of the Comprehensive Plan. The expansion of an existing retail operation could create new jobs and certainly help revitalize the commercial uses of the subject site. The use could also attract patrons to other businesses on this large commercial block. The new design features will also create a more aesthetic focal point in this area of the City.
3. The existing use, a large "big box" establishment does not meet current code requirements for the setback along its frontage street, the Hardie-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 building and expansion in its other particulars, height, other setbacks and lot coverage meets the Zoning Code. Similarly, the parking lot landscaping standards would require a complete redesign of the parking area for what is a modest remodel. In addition, attempting to meet the newer standards would remove the larger, mature specimen trees. Compliance with Building and Fire codes will be determined when actual permits for construction are submitted.
4. The two-story facade of the main complex is not substantially higher than the surrounding uses and the

that do not meet code specifications. There is no reason for the applicant to deviate from the existing standards limiting lighting poles to 25 feet. As discussed above, visitors to the site will more than likely not notice the difference in height and changes in zoning and standards should be applied unless there is an overriding reason not to be conforming. The limited aesthetic of shorter poles in the new parking lot does not provide any justification. If the lighting standards that City has adopted are inadequate then that should be addressed in an amendment to code. The applicant shall comply with the newer standards.

14. On the other hand, the loss of mature trees to redesign a compliant parking lot is not an adequate tradeoff. The applicant will be providing more parking lot landscaping than required and will be supplementing the existing landscaping on the limited perimeter areas of the site. The applicant will have to meet irrigation requirements for all landscaping.
15. Staff noted that the facade could use more relief to break up the various facades of the building. Decorative treatment in the way of contrasting or complementary paints or additional molding trim or other architectural features including additional glazing or false windows shall be used to comply with the guidelines.
16. In conclusion, while it might be nice to start again and comply with newer code provisions, the proposed expansion is modest overall and clearly enhances the existing building's appearance. The additional landscaping will also enhance the site. "Big Box" appears to invite "Big Parking" but as noted, additional parking cuts down on circulating cars and their attendant noise and pollution. Maybe the next remodel will include an elevated parking structure to reduce the sea of asphalt.

**DECISION:**

The proposed site plan for the expansion is approved subject to the following conditions:

1. The applicant shall comply with the six mitigation measures issued as part of the Determination of Non-Significance Mitigated, dated March 22, 2010.
2. The applicant shall be required to record the Short Plat reflecting the property's lot lines as depicted on Exhibit 2 prior to building permit approval. As an alternative the applicant may submit a modification to the approved Site Plan which reflects the surveyed lot lines, at the time of building permit, as long as all development standards of the CA zone can be met.
3. The applicant shall submit screening detail for the refuse and recyclable deposit area prior to building permit approval. Elevations shall include a roof, screening around the perimeter of the wall and have self-closing doors. Chain link, plastic or wire fencing is prohibited.
4. The applicant shall be required to provide a lighting plan that will adequately provide for public safety without casting excessive glare on adjacent properties at the time of building permit review. Pedestrian scale and downlighting shall be used in all cases to assure safe pedestrian and vehicular movement, unless alternative pedestrian scale lighting has been approved administratively or is specifically listed as exempt from provisions located in RMC 4-4-075 Lighting, Exterior On-Site. The applicant shall comply with the newer standards including 25-foot height limitations.
5. The applicant shall submit a landscape maintenance surety device for a period of no less than three years in sufficient amount as determined by the Current Planning Project Manager prior to temporary occupancy permit.

Drofiak Apartments Site Plan Approval  
File No.: LUA-09-112, SA-H  
May 13, 2010  
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743 Rainier Ave S  
Renton, WA 98057

William Carey, Jr. Safety Team Ld.  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Francis Canapi  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Cheryl Harrelson  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Josh Smith, Mgr. Pets/Chem/Paper  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Levan, Dept. Mgr.  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Josie Merveus, Dept. Mgr.  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Abram Sparrow, Dept. Mgr  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Valerie Reyes, ICS Lead Supv. 2<sup>nd</sup> Shift  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

Irish Joy E. Layador, Ent. Supv.  
Walmart #2516  
743 Rainier Ave S  
Renton, WA 98057

TRANSMITTED THIS 13th day of May 2010 to the following:

Mayor Denis Law  
Jay Covington, Chief Administrative Officer  
Julia Medzegian, Council Liaison  
Gregg Zimmerman, PBPW Administrator  
Alex Pietsch, Economic Development  
Jennifer Henning, Development Services  
Stacy Tucker, Development Services  
Marty Wine, Assistant CAO

Dave Pargas, Fire  
Larry Meckling, Building Official  
Planning Commission  
Transportation Division  
Utilities Division  
Neil Watts, Development Services  
Janet Conklin, Development Services  
Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, request for reconsideration must be filed in writing on or before 5:00 p.m., May 27, 2010. Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

F3 - 18 T23N R5E W 1/2

G2 - 24 T23N R4E E 1/2

G3 - 19 T23N R5E E 1/2

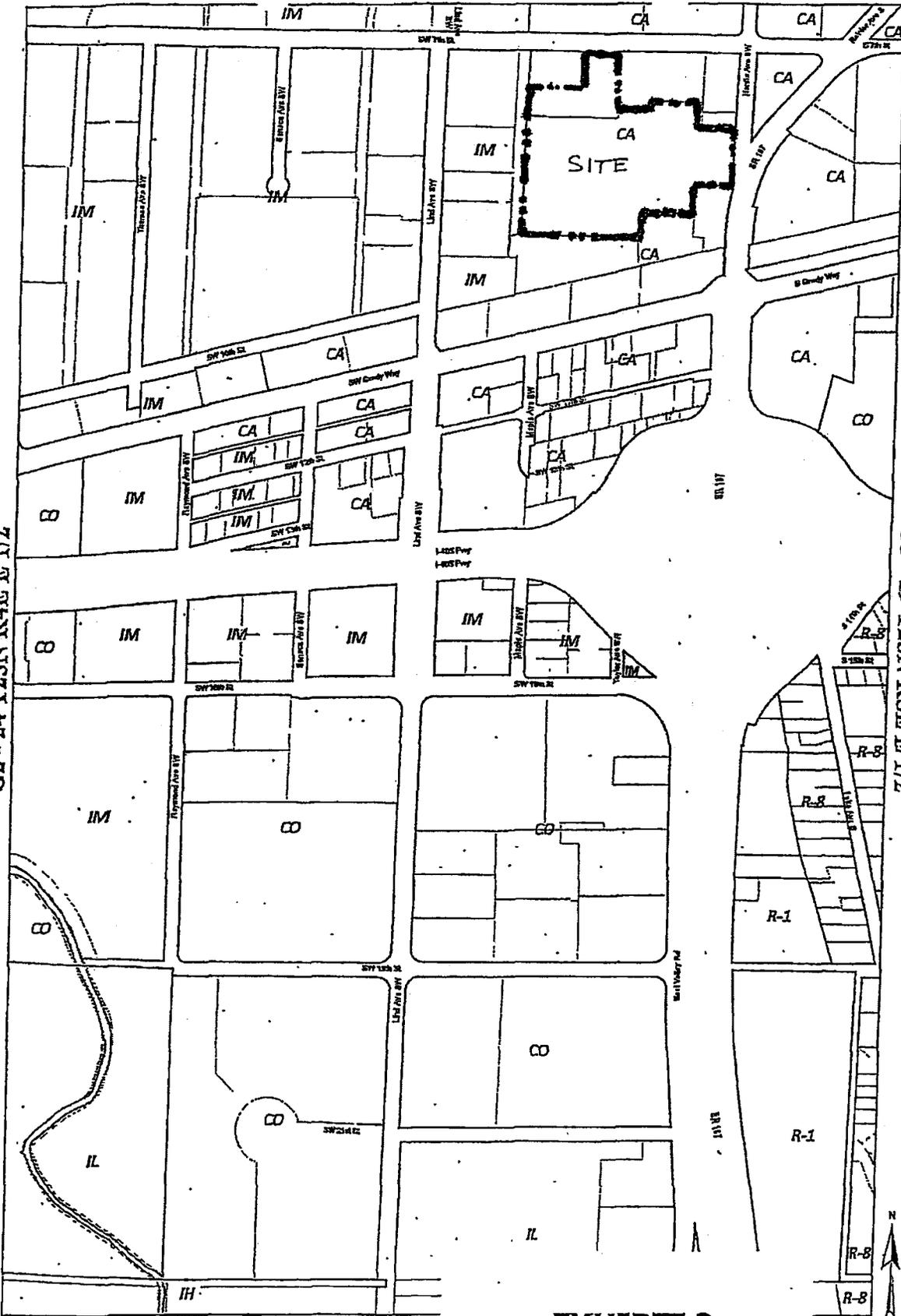


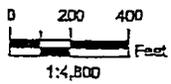
EXHIBIT 2

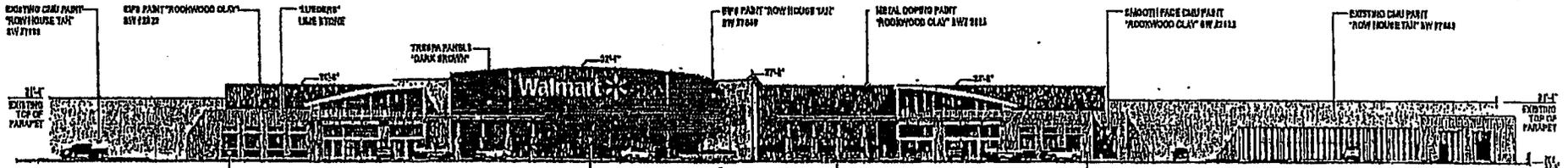
33

ZONING MAP BOOK  
 PW TECHNICAL SERVICES  
 PRINTED ON 11/13/09  
This document is a graphic representation and  
 generated to survey accuracy, and is based on  
 the best information available as of the date shown.  
 This map is intended for City display purposes only.

H3 - 30 T23N

19 T23N R5E W 1/2





EXISTING CLAY PAINT  
"HOUSE PAINT" SW 77113

SPK PAINT "ROCKWOOD CLAY"  
SW 22123

"LUDERS"  
LIME STONE

TERRAZZO PANELS  
"DARK GRAY"

SPK PAINT "ROCKWOOD CLAY"  
SW 22123

METAL COPPER PAINT  
"ROCKWOOD CLAY" SW 22123

SMOOTH FACE CLAY PAINT  
"ROCKWOOD CLAY" SW 22123

EXISTING CLAY PAINT  
"ROCKWOOD CLAY" SW 22123

EXISTING  
TOP OF  
PARAPET

EXISTING  
TOP OF  
PARAPET

SPK PAINT "ROCKWOOD CLAY"  
"DOUBLE BRUSH" SW 22123

TERRAZZO PANELS  
"GRYER"

SPK PAINT "ROCKWOOD CLAY"  
SW 22123

METAL COLORED SPK PAINT  
"ROCKWOOD CLAY" SW 22123

**Front Elevation**

Rabot Ave (East)



SMOOTH FACE CLAY PAINT  
"ROCKWOOD CLAY" SW 22123

SMOOTH FACE CLAY PAINT  
"ROCKWOOD CLAY" SW 22123

METAL COPPER PAINT  
"ROCKWOOD CLAY" SW 22123

**Rear Elevation**

(West)

**EXHIBIT 6**



	March 29, 2010	Renton, WA #2516	City of Renton Planning Division	5
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APR 19 2010

RECEIVED

**CITY OF RENTON**  
**DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT - PLANNING DIVISION**  
**AFFIDAVIT OF SERVICE BY MAILING**

On the 20th day of April, 2010, I deposited in the mails of the United States, a sealed envelope containing Preliminary Report to the Hearing Examiner documents. This information was sent to:

Name	Representing
Jeff Chambers	Contact
Peter Bonnell - Bonnell Family, LLC	Owner/Applicant
Parties of Record	See Attached

(Signature of Sender):

*Stacy M Tucker*

STATE OF WASHINGTON

) SS

COUNTY OF KING



I certify that I know or have satisfactory evidence that Stacy M. Tucker signed this instrument and acknowledged it to be his/her/their free and voluntary act for the use and purposes mentioned in the instrument.

Dated: April 20, 2010

H. A. Graber

Notary Public in and for the State of Washington

Notary (Print):

H. A. Graber

My appointment expires:

August 29, 2013

Project Name:	Walmart Expansion
Project Number:	LUA10-009, ECF, SA-H



Denis Law, Mayor

# CITY OF RENTON

Hearing Examiner  
Fred J. Kaufman

June 10, 2010

Claudia M. Newman  
Bricklin & Newman, LLP  
1001 Fourth Ave., Ste. 3303  
Seattle, WA 98154

Re: Walmart Expansion, LUA-10-009, SA-H, ECF  
Request for Reconsideration

Dear Ms. Newman:

This office received a request for reconsideration in this matter.

As the request notes, the parties seeking reconsideration did not attend the hearing. Since no members of the group represented by the request are identified individually, it is hard to determine if any of them submitted individual comments that are contained in the file but since these parties claim "they were not aware of the proposal at that time" (First full paragraph) it seems that they were not involved in the comment or public hearing. At the public hearing there was no testimony in opposition to the request and no one asked any neutral questions. It would appear that opposition to the application is newly minted in this request. The public hearing was legally convened. There is no allegation that the legal notice was deficient.

The request raised two main issues regarding the approval. The first issue was that traffic counts underestimated the amount of traffic the proposal would generate. This challenge or request for additional information is untimely. The issues should have been raised during the course of the public hearing or in comments submitted in advance of the hearing. Subsequent to the close of the public hearing, the only new information that may be submitted is information that was not reasonably available at the public hearing. If the traffic counts were indeed wrong, that was information that would have been reasonably available at the time of the public hearing and should have been introduced in a timely fashion. In any event their request does not show that the projections were erroneous. The only thing submitted was conjecture about the projections. These parties seeking reconsideration appeared after the public hearing with no showing that they were deprived of an opportunity to timely comment or question the facts surrounding the proposal.

The second issue raised in the request for reconsideration was whether the proposal meets the criteria of Renton's Code. This portion of the request can be divided into two subcategories. One: Whether the proposal meets the Design District D guidelines? Two: Whether the proposal was an improper expansion of a legal non-conforming use? The answers to both questions are governed by the language of the Design District Overlay provisions.

The Design District Guidelines are "overlay" provisions and 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. Section 4-3-100(A)(2) states:

2. This Section lists elements that are required to be included in all development in the zones stated in subsection B1 of this Section. Each

APPENDIX E

CP 859

they, in the language of the code, "shall be required to comply with the provisions of this Section."

In conclusion, there is no reason to alter the original decision nor the conditions attached to that decision.

The parties seeking reconsideration in this matter has already filed an appeal and that appeal will be handled by the City Council. If other parties are not satisfied with this decision, they, too, may appeal to the City Council no later than June 24, 2010.

If this office can provide any further assistance, please feel free to write.

Sincerely,



Fred Kaufman  
Hearing Examiner  
City of Renton

FK/nt

cc: Chip Vincent, Planning Director  
Jennifer Henning, Current Planning Manager  
Peter Bonnell, Bonnell Family LLC, Owner  
Jeff Chambers, Contact  
All Parties of Record

## APPENDIX B

# Commercial Arterial Zone (CA) includes Wal-Mart



### Legend

- Lakes and Rivers
  - Parcels
- Zoning**
- Resource Conservation
  - Residential 1 du/ac
  - Residential 4 du/ac
  - Residential 8 du/ac
  - Residential Manufactured Homes
  - Residential 10 du/ac
  - Residential 14 du/ac
  - Residential Multi-Family
  - Residential Multi-Family Traditional
  - Residential Multi-Family Urban Center Village
  - Center Downtown
  - Urban Center - North 1
  - Urban Center - North 2
  - Commercial Office/Residential
  - Commercial Arterial
  - Commercial Office
  - Commercial Neighborhood
  - Industrial - Light
  - Industrial - Medium
  - Industrial - Heavy
- Street Names**
- Rights of Way**
- Streets**
- Roads**
- Jurisdictions**
- Bellevue
  - Des Moines
  - Issaquah
  - Kent

1:3,408

@ 8.5" x 11"



568.0 0 284.02 568.0 Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

### Notes

Enter Map Description

