

FILED
NOV 13 2024
KATHY MARTIN
WALLA WALLA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WALLA WALLA

COTTONWOOD INVESTORS, LLC, a
Washington limited liability company,

Petitioner,

vs.

THE CITY OF WALLA WALLA, a
Washington Municipal Corporation;

Respondent.

NO. 24 2 00803 36

LAND USE PETITION

LAND USE PETITION

Cottonwood Investors, LLC ("Petitioner") files this action pursuant to the Land Use
Petition Act ("LUPA"), RCW 36.70C.030, for review of Resolution 2024-092 ("Resolution")
adopted by Respondent City of Walla Walla ("City") on October 23, 2024.

Petitioner.

1.1. Petitioner is a limited liability company organized and existing under the
laws of the State of Washington, whose legal address is P.O. Box 1757, 249 W. Alder, Walla
Walla, Washington 99362.

LAND USE PETITION

1.2. The attorneys for Petitioner are: James K. Hayner and Robert King, Minnick-Hayner, Inc., P.O. Box 1757, 249 W. Alder, Walla Walla, Washington 99362.

2. **Local Jurisdiction.** The local jurisdiction whose land use decision is at issue is the City of Walla Walla, 15 North 3rd Avenue, Walla Walla, Washington 99362.

3. **Decisions Subject to Petition.**

3.1 The decision-making body for the land use decision challenged in this Petition is the City of Walla Walla City Council ("Council").

3.2 The land use decision challenged in this Petition is the October 23, 2024, adoption of the Resolution by the Council. A copy of the Resolution is attached to this Petition as Exhibit A.

4. **Standing of Petitioner.**

4.1. Petitioner has standing pursuant to RCW 36.70C.060 because it is the owner of Walla Walla County Assessor Parcel Number 360604120029 (the "Property"), which is the subject of the Resolution. Adoption of the Resolution has prevented Petitioner from developing its property for residential purposes, contrary to the Comprehensive Plan designation and zoning of the property for residential purposes, contrary to the processes developed by the City, and contrary to the formulation of a Development Agreement between the City staff and the Petitioner that meets all the requirements of the Walla Walla Municipal Code ("WWMC" or "Code"). Petitioner is aggrieved and adversely affected by the Resolution because its ability to use the Property is prejudiced by the Resolution, its interests are among those that the City was required to consider when it considered the Resolution, and a judgment in favor of Petitioner would redress the prejudice caused by the Decision.

1 4.2. Petitioner has exhausted its administrative remedies to the extent required
2 by law.

3 4.3. This action is properly filed in Walla Walla County Superior Court,
4 pursuant to RCW 4.12.010, 4.12.020, and 4.12.025, because the Property is located in Walla
5 Walla County and the Decision was issued by the City.
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7 5. **Background Statement of Facts.**

8 5.1. The facts upon which Petitioners rely to sustain their statements of error
9 are set forth in the administrative record of the Decision, as it may be supplemented in this
10 proceeding. A concise summary of the key facts follows.
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12 5.2. The Property is an approximately 104-acre parcel of land that has been
13 part of the City's unincorporated Urban Growth Area since 1996.

14 5.3. Petitioner seeks to subdivide the Property into up to 257 lots for the future
15 construction of single-family homes.
16

17 5.4. In January 2021, Petitioner filed a petition with the City's Development
18 Services Department ("Department") for annexation of the Property into the City.

19 5.5. On April 1, 2021, Petitioner filed an application for a development
20 agreement in conjunction with the proposed annexation. The Department deemed the application
21 complete on September 17, 2021.

22 5.6. On April 28, 2021, the Council adopted Resolution 2021-65, which
23 approved the annexation petition subject only to the Petitioner and the City entering into a
24 development agreement. A copy of Resolution 2021-65 is attached as Exhibit B.
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1 5.7. On September 29, 2021, the Department issued a Notice of Application
2 and initiated a public comment period on the application. Public comments were accepted by
3 the Department until October 29, 2021.

4 5.8. During the following three years, Petitioner worked with the Department
5 and other City staff to analyze the proposal, consider necessary infrastructure, and develop
6 mitigation for potential impacts. Petitioner expended thousands of dollars and presented multiple
7 third-party studies regarding every possible consideration of the development including, but not
8 limited to, traffic, utilities, streets, stormwater mitigation and contribution of private property for
9 development of a City park. Through this process, and as required by 2021-65, Petitioner and
10 Department formulated a development agreement ("Development Agreement") that was
11 acceptable to City staff in all respects and acceptable to Petitioner in all respects. A copy of the
12 Development Agreement is attached as Exhibit C.

13 5.9. The Department prepared a staff report ("Staff Report") summarizing the
14 Development Agreement and the process that led to it, and expressing its support and
15 recommendation to the City Council for approval. A copy of the Staff Report is attached as
16 Exhibit D.

17 5.10. As described in the Staff Report, the Development Agreement proposes
18 development that is consistent with the City's Comprehensive Plan ("Comprehensive Plan" or
19 "Plan"), the City Strategic Plan, the Regional Housing Action Plan, and the Walla Walla
20 Countywide Planning Policies. The proposed development is also consistent with the zoning and
21 development standards of the Walla Walla Municipal Code ("WWMC" or "Code").
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1 5.11. The Development Agreement provides for the inclusion of a significant
2 amount of open space; a comprehensive stormwater plan; and traffic and frontage improvements
3 as part of the proposed development. The Development Agreement also provides for the
4 extension of urban utility services for the proposed development. This extension would build on
5 prior investments and infrastructure installations by the City, including extension of water and
6 sewer utility trunk lines in the area and upgrades to a nearby sanitary sewer pump station.
7

8 5.12. The Department conducted a State Environmental Policy Act (“SEPA”)
9 analysis of Petitioner’s proposal and concluded that the proposal, with the mitigation described
10 above, is not likely to cause a significant adverse environmental impact. Accordingly, the
11 Department issued a Mitigated Determination of Nonsignificance (“MDNS”) for the proposal.
12

13 5.13. The City’s consideration of the Development Agreement was conducted
14 under a quasi-judicial process. The Department conducted a public hearing on the Development
15 Agreement on September 23, 2024, during which members of the Council heard public
16 comments on the proposal. The Development Agreement was made available for public review
17 prior to the hearing.
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19 5.14. On October 9, 2024, the Council held a meeting and by verbal motion
20 disapproved the Development Agreement. During the meeting, members of the Council who
21 voted to disapprove the Development Agreement stated, contrary to the findings in the Staff
22 Report, that the development of the project would be contrary to the 2018 City Comprehensive
23 Plan. These Council members did not express or make any findings as to why the Development
24 Agreement formulated between the City and Petitioner did not meet all of the applicable
25 requirements.
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1 5.15. On October 23, 2024, the Council held a meeting and voted to adopt the
2 Resolution, which rejected the Development Agreement. The Resolution also went beyond the
3 quasi-judicial determination required for the Development Agreement and made a legislative
4 decision that the City reject the area for annexation. That issue was not before the City Council,
5 had not been discussed with Petitioner, and had not been subject to a public hearing. The
6 Resolution states, in relevant part:
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8 **Section 1:** The Walla Walla City Council disapproves and rejects the proposed
9 development agreement between the City of Walla Walla and Cottonwood Investors,
10 LLC (Walla Walla Development Services Dept. file numbers PDA-21-0001 and SEP-21-
0026)

11 **Section 2:** The Walla Walla City Council rejects annexation of the area described in
12 sections 1 and 2 of City Resolution 2021-65 (Apr. 28, 2021) (Walla Walla Development
Services Dept. file number ANX-21-0002).

13 5.16. The Council's adoption of the Resolution prevents the development of
14 housing on the Property as proposed, contrary to the applicable development standards and
15 Comprehensive Plan designation of the Property.
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17 6. **Statement of Errors**

18 6.1. The City's adoption of the Resolution constitutes arbitrary and capricious
19 conduct and is based upon unlawful procedure and a failure to follow a prescribed process, is an
20 erroneous interpretation of law, is not supported by substantial evidence, is a clearly erroneous
21 application of the law to the facts, and is outside the authority or jurisdiction of the body or officer
22 making the decision.
23

24 6.2. Adoption of the Resolution constitutes arbitrary and capricious conduct
25 because it is contrary to the position taken by the City and the representations by City staff,
26 including the Council's 2021 adoption of Resolution 2021-65, which indicated that the Property
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1 would be annexed subject only to the formulation of a Development Agreement consistent with
2 City standards.

3 6.3. Adoption of the Resolution is based upon unlawful procedure and a failure
4 to follow a prescribed process, and is outside the authority or jurisdiction of the body or officer
5 making the decision, because it conflicts with the process established by the Staff Report and the
6 factual findings and legal conclusions in the Staff Report.
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8 6.4. Adoption of the Resolution is based upon unlawful procedure and a failure
9 to follow a prescribed process, and is outside the authority or jurisdiction of the body or officer
10 making the decision, because it conflicts with the requirements for quasi-judicial decisions by a
11 city council, including but not limited to basing the decision only on the established record.
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13 6.5. Adoption of the Resolution is based upon unlawful procedure and a failure
14 to follow a prescribed process, and is outside the authority or jurisdiction of the body or officer
15 making the decision, because the City did not make adequate findings in conjunction with its
16 quasi-judicial decision.
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18 6.6. Adoption of the Resolution is based upon an erroneous interpretation of
19 the law and is unsupported by substantial evidence because the Development Agreement is
20 consistent with the Comprehensive Plan and because the Council cited no evidence to the
21 contrary.
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23 6.7. Adoption of the Resolution is unsupported by substantial evidence
24 because the Development Agreement makes adequate provisions for transportation, stormwater,
25 and utility improvements, and because the Council cited no evidence to the contrary.
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1 7. **Request for Relief.** Based upon the foregoing, Petitioner requests the following
2 relief:

3 7.1. An Order reversing passage of the Resolution and remanding the matter
4 to the Council;

5 7.2. Permission to supplement the record per RCW 36.70C.120(1);

6 7.3. The ability to conduct pretrial discovery per RCW 36.70C.120(2)(c);

7 7.4. An award of allowable costs and attorney's fees against the City;

8 7.5. Permission to amend this Petition to conform to the proof; and

9 7.6. Such other and further relief as to the Court appears just and equitable.
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12 DATED this 12th day of November 2024.

13
14 MINNICK-HAYNER

15
16 By:

17 
18 James K. Hayner, WSBA #6398
19 Robert R. King, WSBA #29309
20 Of Attorneys for Petitioner
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