

Claim for Damages Form

For Official Use Only

City/Organization _____

Date Received from Claimant _____

Claimant Information

Claimant's name: Cottonwood Investors, LLC

Date of Birth: _____

Current residential address: PO Box 1757, Walla Walla, WA 99362

Mailing address (if different): _____

Residential address at the time of the incident (if different from current address): _____

Claimant's daytime phone number (work, home or cell) 509-527-3500

Claimant's email address: jim@minnickhayner.com

Incident Information

Date of the incident: October 23, 2024 Time: 9:00 pm am/pm

If the incident occurred over a period of time, date of first and last occurrences:

From: _____ To: _____

Location of incident: This claim does not concern a specific accident or incident. This claim is based upon City Council action by adoption of a Resolution denying the Development Agreement of Cottonwood Investors with respect to its land use application.

Name, addresses and telephone numbers of all persons involved in or witness to this incident: _____

Walla Walla City Council

Name of all of our employees having knowledge of this incident: All employees at the City Council meeting including city clerk, city manager, city attorney and city planning staff

Name, addresses and telephone numbers of all individuals not already identified above that have knowledge regarding the issues involved in this incident or knowledge of the claimant's resulting damages. Please include a brief description as to the nature and extent of each person's knowledge. Attach additional sheets if necessary.

N/A

Describe the cause of the injury or damages. Explain the extent of the property loss or medical, physical or mental injuries. Attach additional sheets if necessary.

Damages have been incurred by reason of the City Council taking away property rights which have accrued and vested for the benefit of the Claimant. The attached draft Complaint is provided for reference but may be amended, including by additional causes of action based on the events described, prior to filing with the Superior Court.

Has this incident been reported to law enforcement? If so, which agency and name of officer (if known).

No

Have you filed a claim with your insurance carrier? If so, what is their name, phone number and claim number?

No

Name address and telephone numbers of treating medical providers. Please attach billings and records if available.

N/A

Please attach any other documentation that you believe support your claim's allegations

Additional Information Required for Automobile Claims Only

License Plate # _____ Year/ Make/ Model _____
Driver Name, Address & Phone _____
Owner Name, Address & Phone _____
Passenger(s) Name, Address & Phone _____

I am claiming damages in the amount of \$25,000,000 - see attached

I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct. This Claim form must be signed by the Claimant, a person holding a written power of attorney from the Claimant, by an attorney admitted to practice in Washington State on the Claimant's behalf or by a court-approved guardian or guardian ad litem on behalf of the Claimant.

James K. Hayner November 12, 2024
Signature of Claimant Attorney for Cottonwood Investors Date

(If notarized, for notary to complete)

I certify that I know or have satisfactory evidence that James K. Hayner is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: November 12, 2024 Signature: Malli Kesner Title: Notary

My appointment expires: 8/27/25



EXHIBIT 1

DAMAGE CLAIM

Two claims are being asserted. One for the costs and damages incurred during the Application/Development Agreement process estimated to be \$500,000 or as otherwise proved.

The second claim is for diminution in value of the Claimant's property as a result of the city taking away property rights, estimated to be \$25,000,000 or as otherwise proved.

EXHIBIT 2

COMPLAINT

Plaintiff Cottonwood Investors, LLC (“Plaintiff”) alleges as follows for its Complaint against Defendant City of Walla Walla (“City”), a Washington municipal corporation:

A. Parties

1. **Plaintiff.** Plaintiff Cottonwood Investors, LLC 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.
2. **Defendant.** Defendant City of Walla Walla is a Washington municipal corporation. The address of the City is 15 North 3rd Avenue, Walla Walla, Washington 99362.

B. Venue

3. Venue in Walla Walla County is proper pursuant to RCW 4.12.020 and RCW 4.12.025, because the Plaintiff conducts business and owns property in Walla Walla County, the property that is the subject of this action is located in Walla Walla County, and the City is located in Walla Walla County.

C. Background Statement of Facts

4.1. The facts upon which Petitioners rely to sustain their statements of error are set forth in the administrative record of the Decision, as it may be supplemented in this proceeding. A concise summary of the key facts follows.

4.2. The Property is an approximately 104-acre parcel of land that has been part of the City’s unincorporated Urban Growth Area since 1996.

4.3. Petitioner seeks to subdivide the Property into up to 257 lots for the future construction of single-family homes.

4.4. In January 2021, Petitioner filed a petition with the City’s Development Services Department (“Department”) for annexation of the Property into the City.

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

4.6. On April 28, 2021, the Council adopted Resolution 2021-65, which approved the annexation petition subject only to the Petitioner and the City entering into a development agreement. A copy of Resolution 2021-65 is attached as Exhibit B.

4.7. On September 29, 2021, the Department issued a Notice of Application and initiated a public comment period on the application. Public comments were accepted by the Department until October 29, 2021.

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

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

4.10. As described in the Staff Report, the Development Agreement proposes development that is consistent with the City’s Comprehensive Plan (“Comprehensive Plan” or “Plan”), the City Strategic Plan, the Regional Housing Action Plan, and the Walla Walla Countywide Planning Policies. The proposed development is also consistent with the zoning and development standards of the Walla Walla Municipal Code (“WWMC” or “Code”).

4.11. The Development Agreement provides for the inclusion of a significant amount of open space; a comprehensive stormwater plan; and traffic and frontage improvements as part of the proposed development. The Development Agreement also provides for the extension of urban utility services for the proposed development. This extension would build on prior investments and infrastructure installations by the City, including extension of water and sewer utility trunk lines in the area and upgrades to a nearby sanitary sewer pump station.

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

4.13. The City’s consideration of the Development Agreement was conducted under a quasi-judicial process. The Department conducted a public hearing on the Development Agreement on September 23, 2024, during which members of the Council heard public comments on the proposal. The Development Agreement was made available for public review prior to the hearing.

4.14. On October 9, 2024, the Council held a meeting and by verbal motion disapproved the Development Agreement. During the meeting, members of the Council who voted to disapprove the Development Agreement stated, contrary to the findings in

EXHIBIT 2

the Staff Report, that the development of the project would be contrary to the 2018 City Comprehensive Plan. These Council members did not express or make any findings as to why the Development Agreement formulated between the City and Petitioner did not meet all of the applicable requirements.

4.15. On October 23, 2024, the Council held a meeting and voted to adopt the Resolution, which rejected the Development Agreement. The Resolution also went beyond the quasi-judicial determination required for the Development Agreement and made a legislative decision that the City reject the area for annexation. That issue was not before the City Council, had not been discussed with Petitioner, and had not been subject to a public hearing. The Resolution states, in relevant part:

Section 1: The Walla Walla City Council disapproves and rejects the proposed development agreement between the City of Walla Walla and Cottonwood Investors, LLC (Walla Walla Development Services Dept. file numbers PDA-21-0001 and SEP-21-0026)

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

4.16. The Council's adoption of the Resolution prevents the development of housing on the Property as proposed, contrary to the applicable development standards and Comprehensive Plan designation of the Property.

D. Facts

5. The relevant facts are set forth in the Land Use Petition above and are incorporated herein by reference.

E. First Cause of Action: Inverse Condemnation

6. Plaintiff incorporates all previous allegations by reference.

6.1. The Council's adoption of the Resolution effectively appropriates the Property for public use because it prevents private development from taking place and requires the Property to remain open space.

6.2. The Council's adoption of the Resolution did not include payment of just compensation to Plaintiff. To the contrary, adoption of the Resolution followed years of effort and significant financial expenses borne by the Plaintiff in reliance on the City's representations that the Property would be annexed and developed.

6.3. The Council's adoption of the Resolution did not involve any formal exercise of the power of eminent domain.

6.4. Based on its appropriation of the Property without formal eminent domain proceedings, the City is liable to Plaintiff for inverse condemnation.

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6.5. Plaintiff is entitled to damages from the City for the diminution of the fair market value of the Property, in an amount to be proven at trial.

F. Second Cause of Action: Negligent Misrepresentation

7. Plaintiff incorporates all previous allegations by reference.

7.1. The City's representation of the Development Agreement and the process established for its approval established a legal duty to Plaintiff.

7.2. The Council's adoption of the Resolution breached the City's duty to Plaintiff.

7.3. The City's breach of its duty has caused actual harm to Plaintiff, including but not limited to past, present, and future costs for the process of formulating and negotiating the Development Agreement, for attorneys' fees and litigation costs, and because future development on the Property has effectively been prevented, greatly diminishing the Property's value.

7.4. Under the process established by the City and the City's representations to Plaintiff, the City's negotiation of the Development Agreement with Plaintiff involved direct contact with Petitioner that set Plaintiff apart from the general public.

7.5. The City gave Plaintiff express assurances that if the Development Agreement complied with applicable standards, annexation of the Property would proceed.

7.6. Plaintiff justifiably relied on the City's express assurances, devoting years of work and significant financial resources to negotiating the Development Agreement and preparing to make the concessions the Agreement required.

7.7. Because the City's actions conflicted with its representations to Plaintiff regarding the process that would be followed and the information that process would depend on, the City is liable to Plaintiff for negligent misrepresentation.

7.8. Plaintiff is entitled to damages from the City for its expenditures in the course of formulating the Development Agreement and for the diminution in fair market value of the Property, with both amounts to be proven at trial.

G. Third Cause of Action: Intentional Interference with Business Expectancy

8. Petitioner incorporates all previous allegations by reference.

8.1. The City is an "agency" as defined by RCW 64.40.010(1).

8.2. The Council's adoption of the Resolution is an "act" as defined by RCW 64.40.010(6).

8.3. The Development Agreement is a "permit" as defined by RCW 64.40.010(2).

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8.4. The costs expended by Plaintiff in the course of formulating and negotiating the Development Agreement and presenting it to the City are “damages” as defined by RCW 64.40.010(4).

8.5. The Council’s adoption of the Resolution was arbitrary, capricious, unlawful, and in excess of lawful authority for the reasons alleged above, including but not limited to the City’s representations to Plaintiff regarding the process that would apply to the City’s consideration of the Development Agreement and the City’s failure to follow procedures for quasi-judicial decision-making.

8.6. The City’s arbitrary, capricious, and unlawful adoption of the Resolution has caused actual harm to Plaintiff due to Plaintiff’s reasonable expenses and losses during the process of formulating and negotiating the Development Agreement and presenting it to the City.

8.7. Plaintiff is entitled to damages in an amount to be proven at trial. RCW 64.40.020(1).

H. Fourth Cause of Action: Estoppel

9. Petitioner incorporates all previous allegations by reference.

9.1 The City’s adoption of Resolution 2021-65 established a process for annexation and approval of the Development Agreement.

9.2 The City’s adoption of the 2024 Resolution breached the City’s duty to the Petitioner to consider the Development Agreement. The discussion and the consideration of the City Council did not consider the aspects of the Development Agreement but rather the majority of the City Council voted to adopt the Resolution and deny the approval of the Development Agreement because they did not want growth in this part of the city in complete abrogation to the Resolution adopted in April of 2021.

9.3 The City should be stopped from denying the approval of the Development Agreement when such Development Agreement meets all of the City’s planning, platting and subdivision requirements.

9.4 The City’s adoption of the Resolution was arbitrary, capricious and unlawful and was a breach of its duty to review and consider the Development Agreement in good faith based upon its prior Resolution adopted in 2021 which agreed to annex the property based upon a Development Agreement that met municipal requirements.

9.5 The City’s arbitrary, capricious and unlawful adoption of the Resolution without in good faith considering the aspects of the Resolution was a violation of its duty and the City should be stopped from denying the Development Agreement.