WALLA WALLA COUNTY SUPERIOR COURT

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July 8, 2025

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Re: Cottonwood Investors, LLC v. City of Walla Walla
Walla Walla Superior Court Cause No. 24-2-00803-36

Counsel:

29

Cottonwood Investors, LLC, owner of land outside but adjacent to the city of Walla Walla, brings this Land Use Petition Act (LUPA) petition. It requests that the court invalidate Walla Walla City Council Resolution 2024-092 (Resolution 92), whereby the city declined entry into a development agreement with Cottonwood Investors and rejected annexation of Cottonwood Investors' land. I grant the petition in part, and deny the petition in part. I deny the challenge to that part of the resolution that rejected annexation. I grant the petition to the extent of remanding the development agreement application to the Walla Walla City Council to enter written findings of fact.

FACTS

Cottonwood Investors owns a 104-acre tract that lies directly east of and adjacent to the southeast corner of the Walla Walla city limits. This semi-rural tract is the subject

of this lawsuit. In 1996, the city of Walla Walla placed the land into its urban growth area.

At some unknown date, Cottonwood Investors' 104-acre parcel was sundered from a larger parcel of land, the northwest portion of which has been developed with residences. In 2001, the city extended trunk lines for water and sewer to the area.

Cottonwood Investors plans to subdivide the 104-acre parcel into 257 residential lots for single-family homes. The project would include 23 acres of publicly accessible open space, including a walking path. Cottonwood Investors wishes to serve the property with city utilities, stormwater facilities, and public roadways.

Homes already built in the vicinity of the 104-acre parcel are not densely compacted. AR 1300. Many of these homes have scenic views of the Blue Mountains or hills leading to the mountains. AR 885, 1410-11. Cottonwood Investors' development would alter the views. AR 623. People already living in the vicinity moved to the area for peace, quiet, and privacy. AR 862, 893, 1315. The area transitions to farmland. AR 1087, 1139, 1204.

The 104-acre tract has flooded in the past. AR 875, 906. The parcel sits in a depression that drains upgradient lands. AR 201-02. Roads leading to the parcel flood with any significant rainfall. AR 890, 898. The area suffers from poor drainage. AR 932-33, 952, 2200, 2262. Drainage control measures create ancillary problems, such as ditch debris and silt accumulation. AR 985, 1210, AR 1368.

The principal north-south roads leading to Cottonwood Investors' land are Cottonwood Road and Kendall Road. AR 185, 653. Kendall Road lies outside Walla Walla's city limits. Neither road was designed to manage the volume of traffic that the Cottonwood development would generate. AR 1446. Both have substantial gaps where there are no sidewalks or bike lanes. AR 1835-37. Both roads are narrow and unsafe. AR 1122, 1195, 1202, 2234, 2249, 2259. Cottonwood Road has a blind corner, and Kendall Road has three blind sight lines. AR 1234, 1456-57. Kendall Road is a narrow two-lane road with no fog lines, shoulders, curbs, or sidewalks. AR 1138-39, 1143, 2255. The county constructed Kendall Road as a farm road, and growers use the road for moving farm equipment. AR 950, 959, 1087, 1450, 2239, 2255, 2261.

Cottonwood Investors emphasizes the 104-acre tract being in the city's urban growth area, as already mentioned. Nevertheless, in 2108, the city of Walla Walla adopted a new comprehensive plan that directed residential development to occur north, not south, of the city. The 2018 plan resulted from public outreach over two years. AR 2364. Citizens had performed a 180-degree change from 1996, when the citizenry wanted the urban growth area in the south. AR 2365.

Recently, Hayden Homes has built residences north of U.S. 12 near the golf course, which area is northern Walla Walla. AR 2369. The city council has approved the building of a 50-unit low-income housing project by the Walla Walla Housing Authority in the northwest part of town. AR 2369.

The city of Walla Walla's 2018 comprehensive plan plays a significant role in this LUPA action. I quote some important sections.

The city of Walla Walla 2018 Comprehensive Plan promotes development to the north rather than the south of town. LU-7 reads:

> LU Policy 1.8 Encourage new population and commercial growth in the north and northwest portions of the urban growth area

Page LU-5 of the comprehensive plan provides:

> Future Study Area UGA North At such time new land needs to be added to the City's urban growth area based on the City's land capacity analysis and population growth projections, the desired location is north of US 12. The future study area needs to take into account the City's desire to cost effectively deliver urban services and the County's desire to preserve prime agricultural land. An update to Walla Walla County's Agricultural Resource Land Inventory report is necessary.

No similar policy encourages growth on the south side of Walla Walla. Walla Walla's 2018 comprehensive plan places Cottonwood Investors 104-acre tract in the city's rural transition area. Map CC-3. According to a map on page CC-13 of the comprehensive plan, the parcel also lies within the urban/rural edge of the city. The parcel is the farthest removed piece of the urban growth area from downtown shopping and medical facilities. AR 2370.

Page CC (Community Character)-5 declares:

> Rural Transition. The rural transition area has evolved *from agriculture to more dense residential development* with some suburban lots remaining. Lots and setbacks are larger than the adjacent urban area. Land uses include small remnant areas of agriculture and livestock mixed with single-story, single-family ranch style homes, and more dense residential development off Taumarson Road and Cottonwood Road. Streetscapes are minimal with new development offering curbs and sidewalks. Most streets are rural in nature: drained by swales with no streetlights or sidewalks.

> Cul-de-sacs and irregular subdivision roads have replaced the adjacent urban street grid. Collector streets in new residential areas are lined with wood privacy fences.

(Emphasis added).

Page CC-10 of the plan mentions the "urban/rural edge" another area discussed in Walla Walla's comprehensive plan. Mayor Tom Scribner suggested the "urban-rural edge" and the "rural transition area" are the same. AR 2366. Page CC-10 reads:

> Urban/Rural Edge. An important part of Walla Walla's identity are the views of the surrounding countryside and the quick transition from urban conditions to the surrounding rural landscapes. This urban rural transition is what gives the city the visual image of a unique oasis in the Palouse, which has grown more important with the emergence of wine tourism. The key to maintaining this urban/rural transition is careful land use planning.

Cottonwood Investors' proposed development does not fit this picture.

One section of the 2018 comprehensive plan addresses transportation policies. Page TP (Transportation)-10 of the comprehensive plan declares:

> It is difficult to provide urban services to the portion of the UGA south of Prospect Avenue.

The proposed Cottonwood Investors development would lie south of Prospect Avenue.

On page LU (Land Use)-7, the comprehensive plan reads: "LU Policy 1.2 Annex and provide services to all lands within the Urban Growth Area."

The 2018 comprehensive plan discourages development distant from community facilities and services. The plan seeks to ensure "that new subdivisions and housing are designed to accommodate pedestrian and bicycle access within the development to nearby community facilities and amenities, such as schools, parks, shopping areas, transit corridors, and employment centers." LU-9.

Page LU-5 declares

> Multi-family Development A majority of vacant/redevelopable residential land in the planning area is zoned as R-96, which encourages single-family development. Currently, no developable land is zoned for

> multi-family residential development. A goal of this land use element is to encourage a variety of housing types, including multi-family development. Strategically, through zoning, the City plans to designate additional developable land for multi-family type uses.

Page LU-9 reads:

> LU Policy 5.2 Ensure that new subdivisions and housing are designed to accommodate pedestrian and bicycle access within the development and to nearby community facilities and amenities such as schools, parks, shopping areas, transit corridors, and employment centers.

On page CFU (Capital Facilities and Utilities)-8, the comprehensive plan notes that population growth through annexation of the urban growth area south of the city may require new fire services facilities to ensure response capabilities are maintained.

The 2018 comprehensive plan contains a section on housing. Housing Policy 1.1 reads:

> Provide an array of housing choices such as apartments, small lot single-family housing, accessory dwelling units, townhomes, manufactured homes, and cottages to meet the needs of people of all incomes throughout their lifespan.

Page H-15. Housing Policy 1.4 declares:

> Develop incentives for construction of housing affordable to households with low and moderate incomes such as density bonuses, waived fees, multi-family property tax exemption, or a transfer of development rights program.

Page H-15.

When Cottonwood Investors' proposed development is fully built, it will add 2,389 vehicles per day on Cottonwood Avenue and Kendall Road. AR 2372. Transportation infrastructure to and from Cottonwood Investors' parcel and surrounding area needs many improvements. AR 2371. Cottonwood Avenue needs bike and pedestrian facilities from Eagle Crest Drive to Prospect Point Elementary School with an estimated cost of $5 to $10 million. AR 2371. Cottonwood and Kendall Roads are both substandard, with pedestrian and bicycle traffic thereon. AR 2372. A needed bridge will cost $2,483,760, for which Cottonwood Investors agreed to pay $1,180,789. AR 2375-76. The estimated cost for improvement to Kendall Road, for purposes of the Cottonwood Investors development, is estimated at $10 million. AR 1836-37.

Most of Kendall Road lies outside city limits. Walla Walla County indicates it will not pay for costs of improving Kendall Road. AR 2375. The county expects the city to provide proper access for vehicles, pedestrians, and bicyclists on all arterials to the new subdivision. AR 2375. Cottonwood Investors has offered to pay for some of the improvements needed to the road, but the city of Walla Walla will need to contribute. AR 1836.

The Walla Walla Fire Department wishes its response time to each fire to be four minutes. AR 2373. Response time to the Cottonwood Investors' parcel would be eight minutes without a new fire station in the vicinity. AR 2373. The city 2022 Capital Facilities Plan anticipates a new fire station and satellite police station in the area with population growth, a high expense for the city. AR 2374.

On January 5, 2021, Cottonwood Investors submitted a petition for annexation to the city of Walla Walla. On April 1, 2021, Cottonwood Investors submitted a development agreement application attended to the annexation petition. On April 28, 2021, the Walla Walla City Council conducted a public hearing to consider the annexation petition.

At the April 28, 2021 meeting, the Walla Walla City Council adopted Resolution 2021-65 (Resolution 65), which reads in part: "the City of Walla Walla *will conditionally accept the* proposed 104-acre annexation." (Emphasis added). dSection 5 of the resolution declared:

> The annexation of the property described in sections 1 and 2 herein is conditioned upon [Cottonwood Investors] entering into a development agreement with the City of Walla Walla as part of the proposed annexation which sets forth the development standards and other provisions that shall apply to and govern the development, use, and mitigation of the development of the property for the duration of the agreement. The annexation petition ... may not be circulated for signature, and a hearing upon the annexation petition under RCW 35A.14.130 shall not be scheduled or held until after a development agreement is approved by the Walla Walla City Council.

From April 2021 through October 2024, Cottonwood Investors and the Walla Walla Development Services Department (DSD) discussed, negotiated, and drafted a development agreement subject to approval by the Walla Walla City Council. Cottonwood Investors insists it spent hundreds of thousands of dollars conducting studies to mitigate flooding and transportation impacts resulting from the proposed development project. Cottonwood Investors hired engineers and other expert consultants to assess and

prepare plans and specifications to address potential traffic, stormwater, geotechnical and aquifer problems and to outline work needed to install utilities. According to Cottonwood Investors, it would not have undertaken the expense of these experts but for the City's planned annexation of the property for residential housing. DSD and Cottonwood Investors reviewed many public and government agency comments on the development agreement and the proposed development. DSD conducted a full State Environmental Policy Act analysis, which concluded that compliance with the proposed development agreement would mitigate all environmental impacts resulting from the development.

To alleviate potential flooding, the development agreement, at the insistence of DSD, required the installation of a stormwater drainage system to retain water from a 25-year storm event. The draft development agreement requires Cottonwood Investors to construct frontage improvements along the entire length of the property, including street lighting and a bicycle lane. The draft agreement also demands that Cottonwood Investors financially contribute to the City of Walla Walla for planned improvements of nearby intersections and a bridge, in an amount representing Cottonwood's proportionate contribution of additional traffic to those areas. Roads would confirm to city standards.

Upon completion of the draft development agreement, DSD prepared a staff report. The report recommended that the Walla Walla City Council approve the agreement on behalf of the city. The report informed the city council that, with the agreement, the development would satisfy applicable criteria and mitigate problems created by the development. DSD concluded that the Project would not result in contaminants entering groundwater, would not deplete the drinking water aquifer, would likely not impact archaeological objects, and would mitigate potential drainage and erosion problems. AR 206.

One paragraph of the DSD report reads:

> City staff has reviewed the proposal in conjunction with the Walla Walla Countrywide Planning Policies, City of Walla Walla Comprehensive Plan, City Strategic Plan and the Regional Housing Action Plan. Staff submits that the proposed Development Agreement and the proposed development meets the statutory aims of the comprehensive plan and orderly development within the City and provides a benefit to the City, through the construction and dedication of public facilities, as further explained below.

AR 194. This paragraph declares that "the proposed development meets the statutory aims of the comprehensive plan," but does not specifically read that the proposed development conforms to all provisions of the comprehensive plan. The staff report later

quoted sections of the comprehensive plan listing policies. AR 194-98. The report failed to observe that the 104-acre tract lies within the rural transition area.

Walla Walla Municipal Code (WWMC) 20.34.040 grants the authority to approve or reject a development agreement to the city council. The ordinance directs the DSD Director to issue a recommendation to the city council. According to the ordinance, the city council sits as a quasi-judicial body when considering the development agreement.

On August 28, 2024, the Walla Walla City Council scheduled a September 23, 2024 public hearing for review of the development agreement. Minutes of the August 28 meeting read that the council, at the September 23 meeting, will "receive testimony on the development agreement, the annexation [being] addressed later." AR 24.

On September 23, 2024, the Walla Walla City Council conducted a public hearing regarding the proposed development agreement between the city and Cottonwood Investors. The hearing began with a presentation from DSD Director Preston Frederickson, who explained the conclusions in the staff report. Director Frederickson confirmed that the city council sits as a legislature when considering annexation of property, whereas the council sits as a quasi-judicial body when assessing development agreements. He explained further that if the city council approves the development agreement, the council will subsequently consider the pending annexation. The city council later entertained a presentation from Cottonwood Investors and public comment in favor of and against the development project.

The Walla Walla City Council reconvened on October 9, 2024, to deliberate on the development agreement. At the commencement of the meeting, City Attorney Tim Donaldson explained that, under the procedures for consideration of the development agreement, the city council reviews the consistency of the agreement with applicable regulations and specifications in the county code. Attorney Donaldson recommended that the council focus its considerations on whether the proposed project mitigates onsite and offsite impacts and whether Cottonwood Investors will contribute its proportionate share of improvements offsite.

During city council deliberation of the development agreement, Councilmember Rick Eskil expressed concern about the ability of two access roads, Cottonwood Road and Kendall Road, to facilitate all of the traffic to the development and other future developments. Eskil added that traffic was "not [Cottonwood Investors'] problem, it's a community problem." AR 2351-52. According to Eskil: "[Cottonwood Investors] has done more than probably - than the developer needed to do." AR 2351-52. Councilmember Eskil suggested that the city council table consideration of the development agreement so that city staff could develop a plan for the roads.

Councilmember Brian Casey wanted to know Walla Walla County's plans for improving Kendall Road since the road lies outside city limits. Mayor Tom Scribner and Councilmember Monte Willis announced opposition to development on the 104-acre parcel because of the development's inconsistency with the comprehensive plan. Those conflicts included comprehensive plan language regarding flooding, the rural-urban transition area, and affordable housing.

During the October 9 city council meeting, Mayor Scribner declared:

> As if right now, I plan to vote no on this issue for four primary reasons, each of which I intend to speak to.
>
> Number 1, it is not supported by the Comprehensive Plan or by the Regional Housing Action Plan.
>
> Number 2, public safety.
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> Number 3, the cost to the city, both with respect to needed infrastructure – I'm not asking the developer to pay it, other than the proportional share that I will get to – but millions of dollars, and the delivery of city services over time. That's number 3, the cost to the city.
>
> Number 4, it does not provide affordable housing.
>
> I understand with respect to Councilmember Reyna's comment that affordable housing, 0.3 percent – or 30 percent of your income is to housing, whether you're making hundreds of thousands of dollars a year or the median income. But I think that is to raise what I characterize as a false comparison. It's not the same – for a median income family to pay 30 percent or 50 percent is not left with the same sort of disposable money to meet living expenses as a family making hundreds of thousands of dollars. So it's a false equivalence, I think, to say affording housing is the same for everyone. Yes, on the one level it is, but not in the real world of economics.
>
> So those are my four reasons, and I intend to discuss each of them.

AR 2363. I refer to the list of four reasons as "the Scribner quartet."

After announcing the Scribner quartet, Mayor Scribner discussed, for nineteen pages of transcript, details to support each of these four reasons. AR 2363-82. Scribner commented on the extensive community outreach that preceded the adoption and informed the provisions of the 2018 comprehensive plan. AR 2364. The 2018 plan reversed the 1996 plan to steer growth to the south of the city. AR 2364-65. Mayor Scribner reviewed the many comprehensive plan provisions contrary to the Cottonwood Investors development. Cottonwood Investors' 104-acre parcel lies in the rural transition area of the plan. AR 2366. According to Scribner, the Cottonwood Investors plan to develop 200 houses in this rural transition area violated the plan to maintain open space

in the rural transition area and would block current homeowners' views of the Blue Mountain. AR 2367.

Mayor Tom Scribner mentioned that the 104-acre parcel lay in a floodplain. AR 2368. He added that the comprehensive plan desired no housing in a floodplain. AR 2368. Mayor Scribner emphasized that the city council, in conformance to the comprehensive plan, had recently approved residential projects in the north part of town. AR 2369-70.

Mayor Scribner mentioned the high costs imposed on the city as a result of completion of the project. He worried about the safety of use of Cottonwood Avenue and Kendall Road, both substandard roads, with the increased traffic. AR 2382. The city's addition of pedestrian and bicycle lanes and other improvements to the streets accessing Cottonwood Investors would cost $7 million. AR 2371. Mayor Scribner repeated testimony that the fire department could not timely respond to a fire in the 104-acre parcel without the building of new facilities. AR 2373. He recognized that all of these costs could not be imposed on Cottonwood Investors. Instead, the city would need to spend millions of dollars for needed infrastructure. AR 2373. Scribner warned other city councilmembers that, if the city council approved the development agreement, the city would be responsible for millions of dollars in infrastructure costs. AR 2377. The city would need to increase its utility rates as a result. AR 2379.

Mayor Tom Scribner moved, "for reasons stated," that the draft development agreement be denied. AR 2398. Councilmember Monte Willis second the motion. AR 2398. After discussion related to the motion, Councilmember Steve Moss moved to continue the hearing and postpone the vote on the development agreement. AR 2411. Councilmember Moss wanted Cottonwood Investors and DSD staff to attempt to add provisions to the development agreement that would satisfy some of the objectors' concerns. The council voted against the continuance. AR 2412.

Mayor Tom Scribner then renewed his motion to reject the development agreement. AR 2412-13. The mayor's motion passed by a 4 to 3 vote. Councilmembers Eskil, Casey, Willis, and Mayor Scribner voted against entry into the agreement. Councilmembers Steve Moss, Gustavo Reyna, and Jeffrey Robinson voted in favor of its entry.

When the Walla Walla City Council reconvened on October 23, 2024, the council considered adoption of Resolution 92. The resolution reads:

> Section 1: The Walla Walla City Council disapproves and rejects the proposed development agreement between the City of Walla Walla and Cottonwood Investors, LLC....

> Section 2: The Walla Walla City Council rejects annexation of the area described in sections 1 and 2 of City Resolution 2021-65....

During the October 23 city council meeting, Cottonwood Investors' attorney requested that the council delay a vote on annexation in order to afford the developer and DSD staff to negotiate a development agreement acceptable to the council. The attorney complained that a vote rejecting annexation would require Cottonwood Investors to begin the annexation process again, a process neither needed nor fair.

During the October 23 meeting, Councilmember Jeffrey Robinson spoke in opposition to Resolution 92. He lamented the unfairness of Cottonwood Investors expending three and one-half years of time and hundreds of thousands of dollars only to have a development agreement, which staff approved, rejected by the city council. Robinson emphasized that the development agreement met code specifications.

Councilmember Rick Eskil questioned City Attorney Tim Donaldson about the reference to a rejection of annexation of the 104-acre parcel in Resolution 92. Eskil commented that the city council did not discuss annexation during the October 9 council meeting. Attorney Donaldson responded that rejection of the development agreement also ended the annexation process. Donaldson tied the development agreement and annexation together. Mayor Tom Scribner echoed the advice from Attorney Donaldson. By a vote of 4 to 3, the Walla Walla City Council adopted Resolution 92.

Land Use Petition Act

As previously mentioned, Cottonwood Investors brings suit under and only under Washington's Land Use Petition Act, ch. 36.70C RCW. Cottonwood Investors challenges the adoption by the Walla Walla City Council of Resolution 2024-092 (Resolution 92). Cottonwood Investors questions both the denial of annexation and rejection of the development agreement. I later analyze annexation separate from the development agreement.

To prevail, a party who seeks relief under LUPA carries the burden of meeting one of the standards in RCW 36.70C.130(1). *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 894, 83 P.3d 433 (2004). Those standards are:

> (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
>
> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
>
> (d) The land use decision is a clearly erroneous application of the law to the facts;
>
> (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
>
> (f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1). Cottonwood Investors relies at least on subsections (a), (b), and (e) in its LUPA petition. Some of its arguments suggest that Cottonwood Investors also depends on subsections (c) and (d).

Standards (a), (b), and (e) present questions of law that courts review de novo. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). Claims under RCW 36.70C.130(1)(c) challenge factual determinations as unsupported by substantial evidence. Under the substantial evidence standard, a sufficient quantum of evidence in the record must persuade a reasonable person that the declared premise is true. *Nagle v. Snohomish County*, 129 Wn. App. 703, 709, 119 P.3d 914 (2005). Claims under subsection (d), which assert that a land use decision involves the clearly erroneous application of law to facts, must leave a court with a definite and firm conviction that a mistake has been committed. *Cingular Wireless*, 131 Wn. App. at 768. A finding is clearly erroneous under subsection (d) when, although some evidence supports it, the reviewing court on the record gains a definite and firm conviction that a mistake has been committed. *Rmg Worldwide LLC v. Pierce Cnty.*, 2 Wn. App. 2d 257, 270, 409 P.3d 1126 (2017).

With respect to the declination of the development agreement, I rule that the city of Walla Walla did not follow a prescribed process because the Walla Walla City Council did not enter the required written findings of fact. The city has not shown the error to be harmless.

ANNEXATION

Cottonwood Investors forwards two related arguments through its LUPA petition when challenging the annexation vote. First, the city of Walla Walla violated procedures to which the city had committed itself three years earlier, when it conditionally accepted annexation. Second, the Walla Walla City Council never scheduled a public meeting for the annexation vote. I conclude that this court lacks authority, in a LUPA action, to address the merits of a city's annexation decision.

Cottonwood Investors contends that the city council, when voting against annexation on October 23, 2024, violated Resolution 65 adopted in 2021. Resolution 65 reads in part:

> The annexation petition ... may not be circulated for signature, and a hearing upon the annexation petition under RCW 35A.14.130 shall not be scheduled or held until after a development agreement is approved by the Walla Walla City Council.

Cottonwood Investors adds that the city of Walla Walla DSD represented that the city council would take no annexation vote unless and until the parties entered a development agreement. Cottonwood Investors, however, does not identify the location in the record to support this factual assertion. Cottonwood Investors does not indicate the date and time of the representation, the staff member who uttered the representation, or the specific utterance.

Cottonwood Investors also argues that the Walla Walla City Council violated two of the city ordinances and a state statute when voting to deny annexation. WWMC 20.02.080F provides:

> The city council shall by resolution set public hearing(s) to the extent required by RCW 35A.14.130 ... and notice of hearing shall be given as required by the applicable statute.

RCW 35A.14.130, in tum, reads that the city council must schedule a public hearing and publish notice of the hearing on an annexation petition so that "interested persons can appear and voice approval or disapproval of the annexation." The city of Walla Walla gave no notice of a public hearing on the subject of annexation.

WWMC 20.36.080.A.l requires that, before a decisionmaker receives information in a public hearing, any party objecting to jurisdiction must assert lack of jurisdiction on the record. The city council did not afford Cottonwood Investors an opportunity to object to jurisdiction over the annexation before declining annexation.

The city of Walla Walla denies that it violated any statute or ordinance when, on October 23, 2004, the city council rejected annexation. Walla Walla, in essence, contends that denial of annexation automatically followed the city council's rejection of the development agreement.

I need not decide whether or not the city violated any ordinance or statute. Cottonwood Investors only brings a LUPA petition. An interested party may have standing to challenge an annexation vote in the context of another lawsuit. But, this court

lacks authority in a LUPA action to review annexation decisions. RCW 36.70.020(2)(a) excludes annexations from coverage of LUPA. Cottonwood Investors supplies the court no authority for this court to review the propriety of an annexation vote in a LUPA proceeding.

An interesting question arises as to whether the rejection of annexation remains valid when this court rules the city of Walla Walla has yet to properly decline entry of the development agreement. I conclude I also lack authority to answer this question under RCW 36.70.020(2)(a).

DEVELOPMENT AGREEMENT

Cottonwood Investors forwards three and perhaps four related arguments through its LUPA petition when challenging the development agreement vote. First, the city council failed to adopt necessary findings of fact and conclusions of law. Second, the city council diverged from the findings of city staff without an explanation. Third, the council did not base its decision to reject the development agreement on the applicable standards and criteria. Fourth, Cottonwood Investors intersperses throughout its brief challenges to the sufficiency of evidence to support the decision to reject the development agreement. I reserve the first contention, the most imperative or all-encompassing contention, until last. Otherwise, I address these arguments in the order above. I reserve until the very end Cottonwood Investors' claims of a breach of a duty of good faith and promissory estoppel.

A. Divergence from DDS Findings

Cottonwood Investors insists that the Walla Walla City Council needed to either adopt the conclusions of the city of Walla Walla DDS or explain why it disagreed with DDS. Walla Walla answers that, during the October 9 hearing, Mayor Tom Scribner, who moved to deny the development agreement, explained the council's differences with staff. The city highlights that Cottonwood Investors spent ten pages of its opening brief assaulting Mayor Scribner's findings such that the developer knew of the city council's reasoning. I conclude that the Walla Walla City Council did not need to adopt DDS' conclusions or explain why it disregarded the conclusions.

Courts defer to factual determinations made by the highest forum below that exercised fact-finding authority. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768 (2006). Cottonwood Investors argues that the highest forum that exercised fact-finding authority was DSD. I disagree.

WWMC Chapter 20.34 governs the city of Walla Walla's review and approval of a development agreement. No provision within the chapter authorizes DSD to perform

fact-finding. DSD made a recommendation but did not engage in any formal fact-finding. WWMC 2.34.030 declares:

> In determining the appropriate term for a development agreement, *the city council* should consider the type, size and location of the proposal and phasing if proposed. If authorized in the development agreement, an extension may be exercised upon mutual approval of both the developer and the city. All extension requests shall be *reviewed by the city council* after a public hearing on the request unless another process is expressly provided for in the development agreement.

(Emphasis added). In turn, WWMC 20.34.040A reads:

> A development agreement shall only be *approved by the city council* after a public hearing. The director shall make a recommendation to the city council, who will determine the hearing body based on the nature of the proposed action necessitating a development agreement. A hearing body, if other than the city council, shall conduct a hearing and forward its recommendation to the city council for consideration and decision.

(Emphasis added). The Walla Walla City Council never referred the development agreement to a hearing body other than itself.

Cottonwood Investors cites *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990) in support of its argument that the Walla Walla City Council needed to defer to the city DSD. Nevertheless, in *Maranatha Mining*, under the county code, the Pierce County Council had opted for appellate, rather than primary, decision-making role regarding applications for unclassified use permits. The city referred Maranatha Mining's application for a permit to a hearing examiner. The examiner granted the permit and entered findings supporting the grant. On review, the county council denied the permit. The Court of Appeals reversed the county council because the hearing examiner's findings bound the council in the absence of the county council entering its own findings of fact. No hearing examiner reviewed the proposed development agreement between Cottonwood Investors and the Walla Walla City Council before the council's examination of the agreement.

Cottonwood Investors also relies on *J.L. Storedahl & Sons, Inc. v. Clark County*, 143 Wn. App. 920, 180 P.3d 848 (2008). In *J.L. Storedahl & Sons*, a mining company filed a LUPA petition after the Clark County Board of County Commissioners reversed a county hearing examiner's grant of a rezone allowing expansion of mining operations. The hearing examiner found that the rezone matched the comprehensive plan and fulfilled all statutory criteria. The superior court affirmed the action of the county

commissioners. This court reversed because the commissioners did not disagree with any facts found by the hearing examiner. The Board of Commissioners violated a Clark County ordinance that required the board, in the event it reversed a hearing examiner's ruling, to adopt an order that contained: (1) a statement of the applicable criteria and standards in this code and other applicable law relevant to the hearing examiner's decision; (2) a statement of the facts that the board finds show the appealed decision does not comply with applicable approval criteria or development standards; (3) the reasons for a conclusion to modify or reverse the decision; and (4) any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.

Cottonwood Investors misplaces its reliance on *J.L. Storedahl & Sons, Inc. v. Clark County*. No hearing examiner issued a decision that went to the Walla Walla City Council. DDS did not conduct a quasi-judicial hearing, nor enter formal findings of fact.

B. Applicable Standards and Criteria

RCW 36.70B.170(1) authorizes a local government to enter a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement is a voluntary contract detailing the obligations of both parties and specifying the standards and conditions that will govern development of real property. WMC 20.34.010.

This section of the ruling raises three related, but distinct, questions. First, what standards, guidelines, factors, or criteria *could* the Walla Walla City Council have considered when determining whether to adopt the Cottonwood Investors development agreement? Second, what standards, guidelines, factors, or criteria *must* the Walla Walla City Council have considered? Third, what standards, guidelines, factors, or criteria *did* the Walla Walla City Council consider?

Cottonwood Investors insists that the Walla Walla City Council should have only considered "whether the development agreement satisfied applicable standards for a development agreement." (Page 27 of opening brief). Later, however, it writes that the city council could have contemplated whether the proposed development satisfied development regulations and provided sufficient mitigation for anticipated problems. Compliance with regulations and mitigation may relate to, but probably add to, the concept of applicable standards. In turn, Cottonwood Investors highlights that city staff and two councilmembers opined that the city council must limit its review to these three considerations. Cottonwood Investors identifies no rule that comments from staff or one individual councilmember bind the city or city council as a whole. Nor does Cottonwood

Investors cite any law that limits the city council's decision to the questions of whether the development agreement complies with applicable standards and development regulations and whether mitigation suffices. Cottonwood Investors also does not define what it considers to be development regulations, such that I wonder if the comprehensive plan falls within the definition. I also do not know if "development standards" and "development regulations" are coextensive.

When arguing that the city council must limit its review to determining whether the proposed development agreement satisfies applicable standards, Cottonwood Investors cites WMC 20.34.020.A and three Washington decisions. WMC 20.34.020.A reads:

> A. A development agreement must set forth the *development standards* and other provisions that shall apply to, govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement; provided, that:
>
> 1. The development agreement shall be consistent with all applicable *development regulations*.
>
> ...
>
> 3. For the purposes of this section, "development standards" includes, but is not limited to:
>
> a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
>
> b. The amount and payment of impact and mitigation fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions or other financial contributions by the property owner, inspection fees, or dedications;
>
> c. Mitigation measures, development conditions, and other requirements under Chapter 43.21C RCW;
>
> d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
>
> e. Affordable housing, if applicable;
>
> f. Parks and open space preservation;
>
> g. Phasing;
>
> h. Review procedures and standards for implementing decision;
>
> i. A build-out or vesting period for applicable standards; and
>
> j. Any other appropriate development requirement or procedure.
>
> (Ord. 2021-46 § 7, 2021).

(Emphasis added). WMC 20.34.020.A reads that the development agreement must comply with all applicable development standards. Nevertheless, the ordinance does not

read that the city council must limit its decision to approve or reject the development agreement solely to the development standards.

When Cottonwood Investors complains that the Walla Walla City Council failed to address the controlling standards for a development agreement, I assume it also refers to the standards listed in RCW 36.70B.170(3). Under this statute, any development agreement must list the development standards that shall govern the development, use, and mitigation of the development of the real property. "Development standards" includes, but is not limited to: (a) project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes; (b) the amount and payment of impact fees imposed in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications; (c) mitigation measures and development conditions; (d) design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features; (e) affordable housing; (f) parks and open space preservation; (g) phasing of the development; (h) review procedures and standards for implementing decisions; (i) and a vesting period for the applicable standards. WMC 20.34.020.A borrows most of its provisions from RCW 36.70B.170(3).

RCW 36.70B.170(1) demands that the development agreement incorporate the standards listed in subsection (3), but neither subsection expressly demands that the city council consider all of the standards, let alone any of the standards, when entering or rejecting a proposed development agreement. The statute does not explicitly require approval of a proposed development agreement if the agreement addresses all or some of the standards. The statute does not explicitly demand rejection of the draft agreement if the agreement does not fulfill one or more of the standards.

RCW 36.70A.040(4)(d) goes beyond RCW 36.70B.170(3) and WMC 20.34.020.A and requires that development regulations be consistent with and implement the city's comprehensive plan. Since the proposed development agreement imposes development regulations on Cottonwood Investors, I assume both parties agree that, in addition to the factors under RCW 36.70B.170(3) and WMC 20.34.020.A, the comprehensive plan serves as a criterion by which the city council adjudges the development agreement. RCW 36.70A.040(4)(d) thereby suggests that a city may disapprove a development agreement simply on the basis that the proposed agreement has terms that conflict with the comprehensive plan. WWMC § 20.36.090 also demands the city, after a public hearing, to approve or deny an application based on findings that address the comprehensive plan.

Neither RCW 36.70B.170(3) or WMC 20.34.020.A specifically list traffic safety as a factor to consider, but WMC 20.34.020.A(3)(j) authorizes the Walla Walla City

Council to consider other appropriate factors for a residential development. A development agreement must do no harm to public health, safety and welfare. *Miller v. Port Angeles*, 38 Wn. App. 904, 913, 691 P.2d 229 (1984). A city's police power extends to regulatory measures promoting the safety of roads for vehicle traffic and pedestrians. *Miller v. Port Angeles*, 38 Wn. App. 904, 910 (1984). Thus, a city may consider traffic safety when rejecting a development agreement.

RCW 36.70B.170(4) permits the city to obligate the developer, through the development agreement, to fund or provide services, infrastructure, or other facilities. The city of Walla Walla writes that this provision implies that a city may consider the cost to the city of a development's infrastructure when reviewing a proposed development agreement. If the developer does not pay for all of the services, infrastructure, or facilities, the city must. Therefore, I agree with the city. Cottonwood Investors does not argue to the contrary.

Outside of the confines of WMC 20.34.020.A, RCW 36.70B.170(3), and RCW 36.70A.040(4)(d), Washington law does not require that the municipal corporation approve the development agreement under any specific circumstances. The law does not demand that the government body give more weight to one factor over others. The law provides no parameters for balancing opposing considerations. The law does not demand that the reviewing body count those factors favoring entry and those factors disfavoring entry of a development agreement and declare the highest count the winner.

Because the law emphasizes a development agreement as being a voluntary agreement, one might argue that a city council may reject a development agreement for any reason, including an arbitrary or nonsensical reason, or for no reason at all. I conclude otherwise, however, because of the LUPA principles. RCW 36.70C.130(1) impliedly requires the city to review standards, regulations, and other considerations while correctly interpreting the law and basing its decision on the evidence.

In addition to WMC 20.34.020.A, Cottonwood Investors relies on *Kenart & Associates v. Skagit County*, 37 Wn. App. 295, 680 P.2d 439 (1984), *Woods v. Kittitas County,* 162 Wn.2d 597, 174 P.3d 25 (2007), and *Nagatani Brothers, Inc. v. Skagit County Board of Commissioners,* 108 Wn.2d 477, 739 P.2d 696 (1987) to support its argument. None of the cases address considerations relevant to the entry of a development agreement.

Before discussing whether the development agreement met standards and other factors, I note that Cottonwood Investors argues that the city cannot rely on public comments to support its decision, including any findings of fact, because no witness testified under oath. Cottonwood Investors cites no law for this proposition. If I ignored testimony favorable to the city's decision, I would also need to ignore testimony

favorable to Cottonwood Investors. None of the records submitted to the city council, including the staff report, were prepared under oath. I would be left with no evidence. Since Cottonwood Investors carries the burden to show error, it could not show error without some evidence.

I move to the factors under which the Walla Walla City Council denied entry into the Cottonwood Investors development agreement to determine if the city council properly rejected the development agreement. In doing so, I, for the time being, assume that a majority of the Walla Walla City Council adopted as the basis for rejection of the development agreement the Scribner quartet announced by Mayor Tom Scribner when moving to reject the development agreement at the close of the October 9 city council meeting. AR 2363. I also assume the city council adopted the lengthy exegesis of Mayor Scribner that followed the announcement of the quartet. Those four factors are:

1. Conflict with the comprehensive plan.
2. Public safety.
3. Costs to city.
4. Affordable housing.

I will later discuss whether the city council sufficiently adopted these considerations as findings of fact.

The Walla Walla City Council rejected the agreement in part because of its purported conflict with the city's 2018 comprehensive plan. Cottonwood Investors adamantly disagrees that its development and the development agreement diverge from the comprehensive plan. After a review of the comprehensive plan, I disagree with Cottonwood Investors.

According to Mayor Tom Scribner, the development conflicted with the comprehensive plan's disallowance of development in the southern part of the UGA. AR 2372. According to Cottonwood Investors, the comprehensive plan instead designated the property for residential use. Cottonwood Investors does not cite where in the comprehensive plan the land is so designated.

Mayor Tom Scribner commented that the property lies in the comprehensive plan's rural transition area which area would adversely suffer with dense development. AR 2366. To repeat, Cottonwood Investors asserts that the property instead is zoned residential. Cottonwood Investors does not cite any of the record to show the property to be zoned residential. The community character map on the plan's page CC-3 confirms the statement of Mayor Scribner. On this basis alone, the city likely could deny the development agreement. But I will proceed further.

Cottonwood Investors highlights the description of "rural transition" on page CC-5 of the 1998 comprehensive plan. The description reads in part: "The rural transition area has evolved from agriculture to *more dense* residential development with some suburban lots remaining." The logical reading of the sentence is that the rural transition area is denser with houses than the agricultural area. "Agricultural" is the only comparable in the paragraph. I do not read the sentence as stating the rural transition area may include a dense residential development.

According to the map on page CC-13 of the comprehensive plan, the 104-acre parcel lies within the urban/rural edge of the city. Page CC-10 of the plan reads:

> Urban/Rural Edge. An important part of Walla Walla's identity are the views of the surrounding countryside and the quick transition from urban conditions to the surrounding rural landscapes. This urban rural transition is what gives the city the visual image of a unique oasis in the Palouse, which has grown more important with the emergence of wine tourism. The key to maintaining this urban/rural transition is careful land use planning.

The city council vote legitimately considered the blockage of views of current homeowners in the vicinity of the 104-acre parcel.

On the same subject, page CC-10 of the 1998 comprehensive plan reads that the urban rural transition area gives the city visual image of a unique oasis in the Palouse, an important feature for wine tourism. The proposed development does not fit this picture.

The city of Walla Walla 2018 Comprehensive Plan promotes development to the north rather than the south. LU-7 reads:

> LU Policy 1.8 Encourage new population and commercial growth in the north and northwest portions of the urban growth area

Page LU-5 of the comprehensive plan provides:

> Future Study Area UGA North At such time new land needs to be added to the City's urban growth area based on the City's land capacity analysis and population growth projections, the desired location is north of US 12. The future study area needs to take into account the City's desire to cost effectively deliver urban services and the County's desire to preserve prime agricultural land. An update to Walla Walla County's Agricultural Resource Land Inventory report is necessary.

No similar policy encourages growth on the south side.

Page LU-5 also declares

> Multi-family Development A majority of vacant/redevelopable residential land in the planning area is zoned as R-96, which encourages single-family development. Currently, no developable land is zoned for multi-family residential development. A goal of this land use element is to encourage a variety of housing types, including multi-family development. Strategically, through zoning, the City plans to designate additional developable land for multi-family type uses.

Similarly, the comprehensive plan discourages development distant from community facilities and services. The plan seeks to ensure "that new subdivisions and housing are designed to accommodate pedestrian and bicycle access within the development to nearby community facilities and amenities, such as schools, parks, shopping areas, transit corridors, and employment centers." LU-9.

Cottonwood Investors does not directly argue that the city of Walla Walla needed to enter the development agreement because the 104-acre parcel lay within Walla Walla's urban growth area. Some of its arguments, however, indirectly assert this contention. Cottonwood Investors emphasizes that the comprehensive plan conflicts with the designation of the urban growth area. I conclude, however, that the city of Walla Walla does not violate LUPA standards when basing its decision on the comprehensive plan rather than the urban growth area. The urban growth area is not zoning. At least one statute demands that the development agreement be consistent with the comprehensive plan. No statute or ordinance requires that the development agreement coincide with the urban growth area designation. The city well documented the change in public sentiment between 1996 and 2018 to place residential development north of downtown. When Cottonwood Investors began planning for its development, it knew or should have known of the contents of the comprehensive plan that directed residential development to the north of the city.

Mayor Tom Scribner noted that the property lies in a flood zone. AR 2367-68. Cottonwood Investors does not deny that the land lies in a flood zone. It argues that conditions to development can mitigate any exposure to flooding. This argument misses the point, however. A city may deny a development agreement on the ground that the development endangers the health and safety of the community, which flooding does. The law does not demand that a city undertake extensive regulation to prevent wreckage. The law does not command that a city require the developer to perform extensive mitigation measures to prevent the same wreckage so that the city must enter into a development agreement with those extensive measures.

Mayor Tom Scribner mentioned that the property lies in the southernmost part of Walla Walla's urban growth area in a location far removed from downtown and in an area which needs significant public improvements to facilitate development. Cottonwood Investors takes this comment and suggests that the city wishes to unlawfully impose costs on Cottonwood Investors that do not relate to the 104-acre parcel. I analyze the comment differently. Mayor Tom Scribner recognized that the city must pay for some of the costs to extend infrastructure to the parcel and the city cannot afford to bear these costs. On at least two occasions, Mayor Scribner mentioned that he did not ask the developer to pay for infrastructure other than its proportional share. AR 2363. Costs are a legitimate basis for a city to reject a development agreement.

The city council based its decision in part on the development's purported conflict with the land use and transportation policies of the 2018 Comprehensive Plan. AR 2367-70. Page TP-10 of the comprehensive plan declares:

> It is difficult to provide urban services to the portion of the UGA south of Prospect Avenue.

The Cottonwood Investors acreage lies south of Prospect Avenue. The city council's concern for costs conflates with this recognition of the difficulty of supplying urban services to the acreage.

Mayor Tom Scribner also mentioned rejection of the development agreement because of the goal of affordable housing. Cottonwood Investors proposes single family residences only. According to Mayor Tom Scribner, the city of Walla Walla considers affordable housing to be that housing affordable to working families and median income families. AR 2379. In addition to RCW 36.70B.170(3)(e), WWMC § 20.34.020(A)(3)(e) mentions affordable housing as a relevant consideration for a development agreement.

Cottonwood Investors recites principles and cites cases to the effect that a comprehensive plan need not strictly be followed. Along the same lines, a comprehensive plan only establishes a general policy guide. But none of the rules or decisions require a city council, when addressing a development agreement, to ignore even the generalities of a comprehensive plan.

One does not need to peruse the public hearing transcript to conclude that substantial evidence supports the Walla Walla City Council finding that the proposed Cottonwood Investors development conflicts with the comprehensive plan. One need only read the comprehensive plan.

Cottonwood Investors asserts that one or more city council members rejected the development agreement based on considerations outside the scope of the proceeding and the scope of the evidence before the council. Cottonwood Investors identifies the following comments of councilmembers:

> [Mayor Scribner]: And the Cottonwood development, because of its location, not the plan itself, but because of its location doesn't satisfy any of those Comprehensive Plan requirements. AR 2372.
>
> [Councilmember Eskil]: [Traffic is] not the developer's problem, it's a community problem... But I'd like to have a plan before we move forward. AR 2352

Cottonwood Investors argues that these comments show that the two councilmembers based their votes on whether any development should occur on the 104-acre lot not on whether the development agreement satisfied the applicable standards or served its functions.

Cottonwood Investors cites no cases that deem a desire for no development in the subject area as an impermissible basis for voting against a development agreement. Cottonwood Investors' argument assumes that Mayor Scribner and Councilmember Eskil's grounded their respective votes solely on desiring no development. The argument fails to note that the gentlemen based their vote on many factors. Cottonwood Investors cites no law that suggests, even assuming a desire for no development to be an impermissible criterion, the vote fails if one voter with such a position only used the criterion as one of many factors on which he or she based his or her vote.

Cottonwood Investors complains that Mayor Tom Scribner effectively placed a moratorium on development south of the city. Mayor Scribner commented: "We have right now not built on this urban-rural transition...." Assuming Mayor Scribner wishes this moratorium, the city council as a whole only voted to reject Cottonwood Investors' development agreement. No moratorium is in place.

Cottonwood Investors contends that city staff represented to it that the development agreement needed to establish zoning standards and mitigate impacts resulting from the development. Cottonwood Investors does not disclose who, when, and where city staff uttered the comments. Cottonwood Investors does not allege that any staff member represented that the agreement *only* needed to establish zoning standards and mitigation measures. Cottonwood Investors cites no law that any representations by city staff bind the city council or the city.

Cottonwood Investors highlights that Resolution 2021-65 reads that the city of Walla Walla "conditionally accepts" the 104-acres for annexation. This language speaks nothing about accepting a development agreement. The resolution conditioned annexation on the entry of a development agreement. The resolution did not demand that the city necessarily enter a development agreement or enter a development agreement under any particular circumstances. The resolution made no promises of entry of a development agreement as long as the development met all applicable regulations and mitigated all potential harm.

C. Sufficient Findings

Assuming the Walla Walla City Council had sufficient grounds to reject the development agreement, Cottonwood Investors still contends that the city council failed to enter adequate findings of fact. As highlighted by Cottonwood Investors, the city council entered no findings of fact labeled as such.

The city of Walla Walla argues that Cottonwood Investors unduly complicates city council decision-making by demanding that the city enter detailed, if not endless, findings of fact that address the minutiae of the proposed residential development. According to the city, findings of fact serve as a means of permitting a reviewing court to discern the reasons behind an administration body's decision. The city insists that the Scribner quartet serves as the city council's findings of fact and the quartet suffices to uphold the denial of the development agreement. In turn, Cottonwood Investors argues that, assuming this court accepts the Scribner quartet as findings, those findings, being general in nature, do not satisfy the need for findings.

The city of Walla Walla impliedly concedes that, because it sat as a quasi-judicial body when addressing the development agreement, the city council needed to enter findings. An administrative body *must* enter findings on matters which establish the existence or nonexistence of determinative factual matters. *In re LaBelle*, 107 Wn.2d 196, 219, 728 P.2d 138 (1986).

WMC 20.34.040A outlines the procedure for approval of a development agreement. The opening sentence reads: "A development agreement shall only be *approved* by the city council after a public hearing." Because of the word "approved," one might argue that, when the city council disapproves a development agreement, the council need not do so after a public hearing or by following any particular process. The city of Walla Walla does not forward this argument. I proceed on the assumption that the Walla Walla City Council, when considering the Cottonwood Investors development agreement, needed to conduct a public hearing and follow the rules for a public hearing regardless of its decision.

A city may approve a development agreement by ordinance or resolution only after a public hearing. RCW 36.70B.200. The city council may delegate authority to the city planning commission or a hearing examiner to conduct the hearing. RCW 36.70B.200. If the development agreement relates to a project permit application, the provisions of chapter 36.70C RCW, LUPA, apply to the appeal of a decision regarding the development agreement. RCW 36.70B.200.

WMC Chapter 20.36 governs city of Walla Walla public hearings. Cottonwood Investors contends the Walla Walla City Council breached WMC 20.36.090, which addresses findings and the notice of a decision. The ordinance reads:

> A. Following the public hearing procedure described in Section 20.36.080, the approving authority shall approve, conditionally approve, or deny the application *based on findings that address or relate to the applicable standards and criteria of this code* and other referenced chapters of the Walla Walla Municipal Code and the Comprehensive Plan.
>
> B. The approving authority's *written decision* or action shall be issued as soon as practicable following the hearing and within the time required by Section 20.14.090.
>
> C. Notice of decision shall be given as provided in Section 20.14.090.

(Emphasis added).

Walla Walla argues that it need not have entered written findings. The city cites *State ex. rel. Smilanich v. McCollum*, 62 Wn.2d 602, 607, 384 P.2d 358 (1963) and *State v. McLean*, 178 Wn. App. 236, 243, 313 P.3d 1181 (2013) for the rule that a body need not enter written findings unless a statute, ordinance, or rule expressly mandates such. I agree with this rule, but disagree with Walla Walla's application of the rule.

WMC 20.36.090A demands that the city approve or deny an application "based on findings." To repeat, WMC 20.36.090B then declares:

> B. The approving authority's *written decision* or action shall be issued as soon as practicable following the hearing and within the time required by Section 20.14.090.

WMC 20.36.090A does not expressly direct that the city adopt findings in writing. But I inescapably conclude that those findings must be in writing because findings inevitably become an integral part of the decision, which must be in writing under WMC 20.36.090B.

WMC 20.36.090 encapsulates the concepts of "findings" and "written decision" in the same ordinance. A court views an ordinance, like a statute, as a whole. *R. Thoreson Homes, LLC v. Prudhon*, 197 Wn. App. 38, 44, 386 P.3d 1139 (2016). Courts glean the plain meaning of a statute by considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *Association of Washington Spirits & Wine Distributors v. Liquor Control Board*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015); *McFarland v. Tompkins*, 567 P.3d 1128, 1141 (2025).

The city relies on *Hayden v. City of Port Townsend*, 28 Wn. App. 192, 195, 622 P.2d 1291 (1981), wherein the court of appeals wrote that the law does not expressly mandate a particular formality for findings of fact. Nevertheless, the Port Townsend city council recited findings in its minutes of the meeting addressing zoning. No Port Townsend ordinance referenced a written decision.

Written findings facilitate appellate review. *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). An oral ruling may not sufficiently address all of the facts behind the court's decision. *State v. Head*, 136 Wn.2d 619, 623 (1998). Written findings and conclusions also enable the appealing party to focus on issues arguably supported by the record and avoid pursuing issues obviously lacking merit. *State v. Head*, 136 Wn.2d 619, 623 (1998).

In a criminal decision, the Washington Supreme Court upheld CrR 6.1(d)'s demand for written findings of fact. *State v. Head*, 136 Wn.2d 619 (1998). The lack of written findings required a remand to the superior court for entry of findings.

Next, the city of Walla Walla argues that it entered written findings of fact. According to the city, the transcript of the October 9 city council, particularly the comments of Mayor Tom Scribner, serve as the writing. In response, I note that an appellate court generally does not accept a trial court's oral opinion as the necessary findings of fact for a bench trial. *State v. Mallory*, 69 Wn.2d 532, 533, 419 P.2d 324 (1966). In *State v. Mallory*, the Supreme Court knew the content of the trial court's oral ruling because of a hearing transcript. The Supreme Court did not deem the transcript to be written findings.

Alas, because I hold the findings, even as expressed in the hearing transcript, fall short of the detail and formality needed, I do not resolve whether the transcript qualifies as being written. On remand, I encourage the Walla Walla City Council to enter written findings of fact, beyond a hearing transcript.

I now review principles behind the review of findings of fact and decisions that address the sufficiency of the Walla Walla City Council's purported findings. I consider

those purported findings of fact to be the Scribner quartet. I review decisions that address appeals from both administrative agencies and trial courts. Reviewing courts subject findings of fact by an administrative agency to the same requirements as findings of fact drawn by a trial court. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35, 873 P.2d 498 (1994).

Findings of fact ensure that the decisionmaker has fully and properly addressed all the issues in the case before its decision and permit full disclosure to the parties and the appellate court of the bases of its decision. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35-36 (1994); *In re LaBelle*, 107 Wn.2d 196, 218–19, 728 P.2d 138 (1986). When the law requires findings, those findings must be sufficiently specific to permit meaningful review. *In re Detention of LaBelle*, 107 Wn.2d 196, 218 (1986); *Matter of Detention of G.D.*, 11 Wn. App. 2d 67, 69 (2019). No particular formality is expressly mandated. *Hayden v. City of Port Townsend*, 28 Wn. App. 192, 195 (1981).

The administrative body must enter findings on matters which establish the existence or nonexistence of determinative factual matters. *In re LaBelle*, 107 Wn.2d 196, 219 (1986). The findings must contain ultimate facts; mere statements of legal conclusions will render the findings insufficient. *State ex rel. Petroleum Transportation Co. v. Washington Public Services Commission*, 35 Wn.2d 858, 862, 216 P.2d 177 (1950); *State ex rel. Bohon v. Department of Public Service*, 6 Wn.2d 676, 672, 108 P.2d 663 (1940). The findings should indicate the facts which support the body's conclusions. *In re Detention of LaBelle*, 107 Wn.2d 196, 218 (1986); *Matter of Detention of G.D.*, 11 Wn. App. 2d 67, 69 (2019). The findings should not be check-the-box standard findings. *Matter of Detention of G.D.*, 11 Wn. App. 2d 67, 69-70 (2019). The findings should do more than restate the parties' arguments, quote testimony, and reach some conclusions. In *State ex rel. Petroleum Transportation Co. v. Washington Public Services Commission*, 35 Wn.2d 858, 860 (1950). Findings of fact that parrot statutory requirements may survive scrutiny if they are specific enough to permit meaningful appellate review. *In re Dependency of K.R.*, 128 Wn.2d 129, 143, 904 P.2d 1132 (1995); *Matter of W.W.S.*, 14 Wn. App. 2d 342, 362–63, 469 P.3d 1190, 1202 (2020). More detail may be needed if a statute or court rule requires findings be in writing. *Matter of Detention of G.D.*, 11 Wn. App. 2d 67, 70 (2019).

The trial court need not make findings of fact on every contention of the parties. *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 707, 592 P.2d 631 (1979); *City of Tacoma v. Fiberchem, Inc.*, 44 Wn. App. 538, 541, 722 P.2d 1357 (1986). The trial court need only enter findings identifying the material issues before the court, the issues on which the trial court ruled, and the basis for the ruling. *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 707 (1979); *City of Tacoma v. Fiberchem, Inc.*, 44 Wn. App. 538, 541 (1986). When assessing the sufficiency of evidence, this reviewing court may consider all facts in

the record. *Shultes v. Halpin*, 33 Wn.2d 294, 306, 205 P.2d 1201 (1949); *City of Tacoma v. Fiberchem, Inc.*, 44 Wn. App. 538, 541 (1986).

I discuss some Washington decisions to give some flesh to the above rules. In *State ex rel. Bohon v. Department of Public Service*, 6 Wn.2d 676, 108 P.2d 663 (1940), railroads appealed an order of the Department of Public Service that cancelled rate schedule decreases filed by railroad companies. In the schedules, the railroads reduced their rates for the transportation of petroleum products marketed by California petroleum companies from marine terminals in Vancouver and on the Puget Sound to destinations in eastern Washington. Montana oil producers had entered the eastern Washington petroleum market. In response, the California petroleum companies built large storage facilities in Umatilla and Attalia, barged the product to the facilities, and delivered the petroleum by truck. Attalia was a small community in Walla Walla County that joined the company of the dinosaur and dodo bird with the building of the McNary Dam and the formation of Lake Wallula. Railroad companies feared the California producers would no longer employ their services. The Department of Public Services along with the Interstate Commerce Commission investigated the railroad companies lowering of rates and issued an order revoking the rates and fixed a minimum rate for the future. The superior court affirmed the department's order.

On appeal to the Supreme Court, the railroad companies challenged the sufficiency of the Department of Public Services' findings entered when the department issued its order denying the rate decrease and fixing a minimum price. A Washington statute demanded the department, at the conclusion of a hearing, "render findings concerning the subject matter and facts inquired into, and shall enter its order based thereon." The Supreme Court reviewed earlier decisions, from which it derived a number of principles when entering findings. The statute contemplated a statement of the facts found in direct and certain language, sufficiently clear as to leave no misunderstanding as to their meaning and purport. Simply identifying the parties' contentions did not suffice. Repeating hearing testimony also did not suffice.

The Supreme Court, in *State ex rel. Bohon v. Department of Public Service*, noted the task of the Department of Public Services was deciding whether the rate charged was just and reasonable while seeking the lowest possible price to be paid by shippers and consumers. The department's findings included at length the history behind delivering oil products to eastern Washington both from the Pacific coast and eastern Montana. The findings noted the need to prevent the elimination of competition resulting from one mode of transportation ceasing because of the lack of profit. The findings referenced evidence submitted by the railroad companies of costs. After expressing doubt that rail costs should be a determining factor, the findings recited that the department used the costs presented as one of its guides. The findings mentioned cost studies made by the department, after which the findings stated the impossibility of determining the cost to

California companies to have their products moved up the Columbia River to Attalia and Umatilla and from there distributed to the Inland Empire markets. The findings also noted changing conditions that could impact the profitability of rates. The Department ended its discussion with specific findings of fact:

> 1. We find that the rates named on bulk petroleum products as described and set forth in Appendix 'A,' attached hereto, should be the minimum reasonable rates for both railroads and motor vehicle carriers between the points named and that such rates should be made subject to the rules set forth therein.
>
> 2. We further find that in cases where the present effective railroad rates are lower than those set forth in Appendix 'A', the involved rail lines should be required to correct their tariffs by naming rates which are either the same or higher than those set forth in Appendix 'A' and that such changes should be made on statutory notice and become effective not later than January 10, 1940.
>
> 3. We further find that Department of Public Service Tariff No. 7 should be corrected on statutory notice by naming point-to-point rates set forth in Appendix 'A', such rates to become effective January 10, 1940.
>
> 4. We further find that Supplements 5 and 6 to W. J. Bohon Tariff No. 14–N, W.D.P.S. No. 535, should be cancelled as of November 9, 1939 and that permission should be granted to file such cancellation supplement on one day's notice.
>
> 5. We further find that the original order in F.H. 7223 should be vacated and set aside in so far as it fixes rates.

The Supreme Court reversed the Department of Public Service. While the department's discursive narration of the conditions and events leading to the proceeding strongly suggested that the final decision of the department was based, in part, on the rates which competitive lines of transportation must charge in order to continue in business, the opinion did not definitely and clearly say so. While the decision referred in a general way to well recognized rate-making factors and recited that due consideration to all of the facts in the record had been given, the decision contained no specific findings as to the factors on which it based its order. In turn, the specific findings at the end of the decision amounted to nothing more than ultimate conclusions drawn from the preceding general narrative. The department entered no finding of the cost of all-rail transportation.

State ex rel. Petroleum Transportation Co. v. Washington Public Services Commission, 35 Wn.2d 858, 216 P.2d 177 (1950) comes from a bygone era of common carrier regulation. A Washington statute compelled the public services commission, before it issued a permit to transport goods, to hold a public hearing and find: (1) that the applicant was financially able, properly and adequately equipped and capable of

conducting the subject transportation service; (2) that the additional service would not unreasonably congest the highways or unreasonably endanger the stability and dependability of the service essential to the public needs; and (3) that the granting of a permit would be in the interest of the shipping public and would not tend to impair the stability or dependability of existing service essential to the public needs or requirements. The Supreme Court reversed the granting of a permit because the commission's findings of fact consisted of argument, recitation of facts, quoting of evidence, and conclusions. I would bore the parties by quoting the lengthy findings about the equipment of the applicant, the location of the equipment, financial ability of the applicant, the laws governing motor freight carriers in the State of Washington, the other available shippers, location of petroleum supplies, the possible customers of the applicant, difficulties encountered by transport companies, and trucks returning without a load from a trip. The findings quoted pages of testimony from the hearing transcript. The findings concluded with the statement that:

> No convincing evidence to the contrary having been presented, and the record supporting our findings, the Department finds that to grant to the applicant the authority set forth in the order herein will be in the interests of the shipping public and will not tend to impair the stability or dependability of existing service essential to the public needs or requirements being rendered in the area which the applicant seeks to serve.

The order did not contain any reference to the question of whether the issuance of a permit would unreasonably congest highways. The Supreme Court deemed a factual response to this question important because of the presence of twenty-one carriers authorized to render service in the territory which Pacific Inland Transport, Ltd. sought to serve. Because the department failed to issue critical findings, the order granting the permit was void. The court remanded the case to the department to enter proper findings on the record already made or to be made.

In *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26 (1994), landowners appealed the county council's approval of a hearing examiner's decision approving a conditional use permit application and dismissing an environmental impact statement (EIS) appeal with respect to proposed sanitary landfill project. The superior court reversed, and the county and the landfill operators appealed. The Supreme Court affirmed the superior court while ruling, in part, that the hearing examiner's findings and conclusions were inadequate to determine basis for his decision upholding adequacy of EIS.

The bulk of the hearing examiner's decision consisted of summarizing evidence presented without any guidance as to how disputed evidence was resolved. For example, one important issue was whether the proposed landfill project was a public or private project. The sole "finding" on the issue was: "The proposal advanced by the applicant is

for a private project as defined by WAC 197–11–440(d) [*sic,* should be 197–11–780]." The exact same sentence was then repeated as a conclusion of law. Another crucial issue was whether the EIS adequately discussed alternatives to the proposed project. Findings included: "Based upon the evidence presented, it appears that the environmental evaluation of the Planning Division is adequate." Hearing Examiner Decision, case CP 8–89, finding of fact 2. "All Pierce County policies, state statutes and regulations are being met...." Hearing Examiner Decision, case CP 8–89, finding of fact 13. As a conclusion of law, the hearing examiner concluded: "The Environmental Impact Statement filed as a final EIS is adequate." Hearing Examiner Decision, case CP 8–89, conclusion of law 4.

The Supreme Court, in *Weyerhaeuser v. Pierce County*, reasoned that the findings and conclusions were inadequate to determine the basis for the hearing examiner's decision upholding the adequacy of the EIS. While a finding recited that the project is a private project, the court could not determine the basis for that conclusion. The findings also failed to explain how the hearing examiner concluded the EIS was adequate. The hearing examiner never addressed whether the EIS contained a proper discussion of alternatives to the proposed site, as required, yet that issue involved a major challenge to the adequacy of the EIS.

In *Kenart & Associates v. Skagit County*, 37 Wn. App. 295, 680 P.2d 439 (1984), the Court of Appeals offered detailed guidance for entry of findings of fact needed for appellate review. The board of county commissioners denied a developer's application for a planned unit development. The Court of Appeals remanded for a further hearing and for clarification.

The Court of Appeals, in *Kenart & Associates v. Skagit County*, shared a number of observations about the county commissioner's findings. The commissioners found that the planned unit development would contribute to the loss of agricultural lands, but the finding conflicted with the comprehensive plan which dictated residential rather than agricultural use of the area. Evidence supported the county commissioners' finding that the development would increase traffic levels on a nearby state route, but the findings did not discuss whether the developer's proposed solution alleviated the problem. A finding that potential drainage problems existed was not sufficiently precise to explain a denial in the face of a contrary opinion by the Public Works Department. The commissioners' finding that fire and police protection would not suffice conflicted with the opinions of reviewing agencies. The mere fact that more houses meant more children and more children mean greater school capacity was needed did not end the inquiry for purposes of conclusory findings. Any finding that existing rural life styles might be disrupted by the proposed use was insufficient to support denial of the plat in view of a comprehensive plan which authorized the population density requested by the developer. Findings that the community needed no additional lots and that the public interest would not be served

by approving the proposed plat constituted mere recitals that needed support from underlying facts.

On appeal, Kenart & Associates also contended that, because of the denial of the permit for the development, the Skagit County Board of County Commissioners needed to disclose those steps needed to obtain approval at a later date. The Supreme Court rejected any such obligation on the county.

In *In re Detention of LaBelle*, 107 Wn.2d 196 (1986) and *Matter of Detention of G.D.*, 11 Wn. App. 2d 67 (2019), the respective trial court's findings merely parroted language from the disability statute that allows commitment if the person presented a likelihood of serious harm to herself. The court findings did not suffice to permit meaningful appellate review because they did not indicate the factual bases for the court's conclusion that G.D. or LaBelle presented a likelihood of serious harm to their respective selves. MPR 2.4(b)(3) required written findings.

The seven cases discussed require a Washington body sitting in a quasi-judicial capacity to provide more information than the conclusory Scribner quartet. Conversely, the same legal sources anticipate the quasi-judicial body to issue findings more succinct than 19 pages of a hearing transcript.

I expound further. Mayor Tom Scribner moved to deny the application for the development agreement. He couched his motion with the phrase: "for reasons stated." He previously listed his quartet of reasons and previously discussed some of the underlying basis for those reasons. Nevertheless, a person's "reasons" for voting a particular way are not facts in addition to being conclusory. Mayor Scribner likely mentioned some of those facts behind his reasons before asserting his motion, but one reading the transcript does not know which of those facts the city council wished to adopt as part of its written decision. The city does not argue that this court should sort through Mayor Scribner's soliloquy and make findings on its own.

Although the mayor of Walla Walla, Tom Scribner was not the only one voting to deny the development agreement. Three others joined. One might assume that the other three, and in particular council member Monte Willis who seconded the motion, joined in those reasons. But the record does not confirm any consensus as to the resolution of dispute facts and on what facts the majority of the city council based the denial. The city of Walla Walla's decision was a group decision and those who vote with the majority should be afforded the opportunity to comment and approve of a written set of findings

City Attorney Timothy Donaldson admirably outlined in the city's brief places in the record to support Mayor Tom Scribner's list of four reasons. But the reviewing court

should be able to look at a detailed list of findings and then employ the defending party's citation to the record to easily determine if facts support the findings.

Detailed written findings help the city council, Cottonwood Investors, and this court to determine what matters. Written findings will help the court better address the contentions of Cottonwood Investors.

DUTY OF GOOD FAITH

Cottonwood Investors argues that the city of Walla Walla owed it a duty of good faith and fair dealing. Nevertheless, the implied covenant of good faith and fair dealing does not impose a free-floating obligation of good faith on the parties. *Rekhter v. State, Department of Social & Health Services*, 180 Wn.2d 102, 113, 323 P.3d 1036 (2014). Instead, the duty of good faith and fair dealing arises only in connection with terms agreed to by the parties." *Rekhter v. State, Department of Social & Health Services*, 180 Wn.2d 102, 113(2014). The implied duty of good faith is derivative, in that it applies to the performance of specific contract obligations. *Johnson v. Yousoofian*, 84 Wn. App., 755, 762, 930 P.2d 921 (1996). If a party holds no contractual duty, the party possesses no duty that must be performed in good faith. *Johnson v. Yousoofian*, 84 Wn. App., 755, 762, 930 P.2d 921 (1996).

The city of Walla Walla and Cottonwood Investors never entered a contract. Therefore, Cottonwood Investors has no cause of action for breach of the duty of good faith.

PROMISSORY ESTOPPEL

Cottonwood Investors also claims it may recover relief under LUPA on the basis of promissory estoppel. Promissory estoppel relates to promises which lack a contractual basis in that there was no bargain. *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 261 n. 3, 616 P.2d 644 (1980). Promissory estoppel makes a promise binding, under certain circumstances, without consideration in the usual sense of something bargained for and given in exchange. *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 261 n. 4 (1980).

In Washington, promissory estoppel has five elements: (1) a promise which (2) the promisor should reasonably expect to cause the promisee to change his position and (3) which does cause the promisee to change his position (4) justifiably relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of the promise. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 171–72, 876 P.2d 435 (1994) Obviously, promissory estoppel requires a promise. *Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn. App. 5, 13, 98 P.3d 491 (2004). A promise manifests an intention to act

or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made. *Elliot Bay Seafoods, Inc.*, 124 Wn. App. 5, 13 (2004).

Not every promise qualifies for promissory estoppel. *Elliot Bay Seafoods, Inc.*, 124 Wn. App. 5, 13 (2004). A statement of future intent does not comprise a promise for the purpose of promissory estoppel. *Elliot Bay Seafoods, Inc.*, 124 Wn. App. 5, 13 (2004). Promissory estoppel requires the existence of a clear and definite promise. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 173 (1994). Also, the promise must be worded consistently with an intent for it to be enforceable. *Washington Educational Association v. Washington Department of Retirement Systems*, 181 Wn.2d 212, 225, 332 P.3d 428 (2014). This needed element echoes another of promissory estoppel's element that being the speaker should reasonably expect that the promisee to change his or her position based on a promise.

As previously written, Cottonwood Investors isolates no promise given that, if Walla Walla's DSD recommended the terms of a development agreement, the city would enter the development agreement. Cottonwood Investors also identifies no promise that Walla Walla would grant annexation if staff approved of a development agreement.

CONCLUSIONS

In motion to dismiss, the city argued a waste of time to remand to the city council since the city council may again deny the application. Yet, courts routinely remand to county, city or other municipal corporation's governing bodies for entry of sufficient findings of fact even with the expectation that the decision will remain the same.

RCW RCW 36.70C.130(1)(a) indicates the court may affirm city action, despite a procedural error, if the court adjudges the error harmless. I wonder whether insufficient findings of fact constitute procedure or substantive error. One could consider the lack of findings substantive in that the reviewing court cannot for certain determine the basis on which the city rendered a decision. Regardless, some possibility exists that the city council could after assembling written and detailed findings of fact change its vote to reject the development agreement. Thus, I do not consider the error harmless.

I could have shortened this ruling's discussion of the development agreement by simply announcing a remand to the city council for the entry of written detailed findings of fact and thereby avoided whether the city council's decision properly addressed the factors to be considered. I did not do so because I wanted to save time for the parties on remand. On remand, the Walla Walla City Council is free to take new evidence and argument if it wishes or conversely base its findings of fact solely on the record of the earlier hearing.

Sincerely,

George Fearing

George B. Fearing
Walla Walla County Superior Court
Judge Pro Tem