

## **MINUTES**

REGULAR COUNCIL MEETING  
OF  
NOVEMBER 23, 2009  
5:30 P.M.  
WASCO COUNTY COURTHOUSE  
THE DALLES, OREGON

**PRESIDING:** Mayor Nikki Lesich

**COUNCIL PRESENT:** Bill Dick, Carolyn Wood, Jim Wilcox, Dan Spatz, Brian Ahier

**COUNCIL ABSENT:** None

**STAFF PRESENT:** City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Senior Planner Dick Gassman, Police Chief Jay Waterbury, Administrative Intern Jared Cobb, Finance Director Kate Mast, Engineer Dale McCabe, Community Development Director Dan Durow, Police Captain Ed Goodman

### **CALL TO ORDER**

Mayor Lesich called the meeting to order at 5:31 p.m.

### **ROLL CALL**

Roll call was conducted by City Clerk Krueger; all Councilors present.

### **PLEDGE OF ALLEGIANCE**

Mayor Lesich invited the audience to join in the Pledge of Allegiance.

### **APPROVAL OF AGENDA**

Mayor Lesich asked the Council to amend the agenda by adding authorization for City Clerk to endorse an OLCC change in ownership application for the Columbia Portage Grill, to the

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It was moved by Wood and seconded by Dick to approve the agenda as amended. The motion carried unanimously.

### **PRESENTATIONS/PROCLAMATIONS**

#### **Audit Presentation**

The annual audit was presented by Rob Tremper of Dickey & Tremper. He highlighted the audit findings, corrected and uncorrected misstatements, and audit issues. Tremper said a clean audit opinion had been provided and that the audit had gone well.

Councilor Spatz asked if Tremper believed there would be any auditing challenges in the upcoming year due to federal grant reporting. Tremper said staff had been trained in reporting requirements and expected it to go well. He said it was important for departments to communicate well with the Finance staff.

Finance Director Mast said staff had developed a system for project tracking, but due to the amount of federal funding received, a single audit would be required. Tremper said if more than \$500,000 was received in federal funding, there would be significant audit requirements.

Councilor Ahier asked staff to provide periodic updates to the City Council on their progress to eliminate duplicate files.

It was moved by Wood and seconded by Spatz to accept the Audit Report.

### **RECESS TO URBAN RENEWAL AGENCY MEETING**

Mayor Lesich recessed the City Council meeting to convene as the Urban Renewal Agency at 5:48 p.m.

### **RECONVENE TO CITY COUNCIL MEETING**

The City Council meeting reconvened at 6:00 p.m.

### **AUDIENCE PARTICIPATION**

City Attorney Parker stated that comments concerning the Wal-Mart issue should not be considered under Audience Participation. He said strict land use guidelines were in place concerning the matter and to hear comments under audience participation could be considered as ex-parte contact for the City Council.

Councilor Ahier asked how the citizens could communicate their concerns to the City Council. City Manager Young said the City Council could determine what they wanted to hear when the item appeared on the agenda. He said those comments would not be appropriate during this portion of the agenda.

Steve Kelsey, 3850 Knob Hill Road, The Dalles, questioned when the location of the meeting was changed. He said the newspaper reported it would be held at City Hall.

City Manager Young said the agenda was published and available on the website ten days prior to the meeting and was always scheduled to be at the Courthouse. He said the location had not been changed since that time and notices had been posted at City Hall to let people know the location was at the Courthouse.

Adam Gishner, 1314 Washington Street, The Dalles, said it was unfair to suppress public opinion.

City Manager Young said the Wal-Mart issue was a quasi-judicial process and rules must be followed. He said staff was responsible to ensure fairness to all parties involved.

#### **CITY MANAGER REPORT**

None.

#### **CITY ATTORNEY REPORT**

None.

#### **CITY COUNCIL REPORTS**

None.

#### **CONSENT AGENDA**

It was moved by Wood and seconded by Wilcox to approve the Consent Agenda as amended. The motion carried unanimously.

Items approved by Consent Agenda were: 1) approval of November 9, 2009 regular City Council meeting minutes; 2) approval to declare Police Department vehicle as surplus property; 3) Resolution No. 09-034 authorizing transfers of budget funds between departments and categories of the General Fund for the fiscal year ending June 30, 2010; and 4) authorization for City Clerk to endorse an OLCC change in ownership application for Portage Grill.

### **PUBLIC HEARINGS**

#### Public Hearing to Receive Testimony Regarding Proposed Rate Increase by The Dalles Disposal

Mayor Lesich reviewed the procedures to be followed for the public hearing.

City Attorney Parker reviewed the staff report.

#### Testimony

Erwin Swetnam, The Dalles Disposal, testified in support of the application and in response to a question asked at a previous meeting, said that cost reduction efforts were primarily in low turn over in employees, training and safety, reducing the injury and accident rates. He said the company was slowly investing in updated trucks which were much safer for the employees and would require fewer trips to the landfill, resulting in fuel savings.

Councilor Spatz said he had been asked by a citizen if any additional recycling services were proposed, such as offering more variety in what could be recycled. Mr. Swetnam said there were no plans to add items in the near future. Spatz said he appreciated the services offered by The Dalles Disposal.

Councilor Wilcox asked if the new trucks had more wheels to spread out the weight. Swetnam said they had an extra axle.

Mayor Lesich asked if The Dalles was doing better with recycling numbers over the past year. Swetnam said they recycling was good, but the problem was that some recycling companies were not reporting, which made the numbers seem lower.

Hearing no further testimony, the public hearing was closed.

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Resolution No. 09-035 Approving a Rate Increase of 1.5% for Services Provided by The Dalles Disposal Service for Increased Operational Costs by The Dalles Disposal Service, Inc.

It was moved by Wilcox and seconded by Wood to adopt Resolution No. 09-035 approving a rate increase of 1.5% for services provided by The Dalles Disposal Services for increased operational costs by The Dalles Disposal Service, Inc. The motion carried unanimously.

**ACTION ITEMS**

Determination of Scope of Issues to be Considered During Remand Hearing on Approval of Site Plan for Proposed Wal-Mart Store and Scheduling of Date for Remand Hearing

City Attorney Parker reviewed the staff report. He noted the Land Use Board of Appeals (LUBA) had entered a final opinion and order on October 8, 2009, remanding the Site Plan application of Wal-Mart because the City failed to adequately explain the traffic counts taken on a weekday to measure the 30<sup>th</sup> highest hour volumes for traffic. Parker said the City had 30 days from the date of the applicants request to proceed, to make a final decision concerning the remanded matter.

Parker said the City's Land Use Development Ordinance (LUDO) did not include specific provisions establishing procedures for a hearing remanded by LUBA and the City Council had authority to decide the scope of issues to be considered in the remand hearing.

Parker reviewed his memorandum to the City Council, saying that LUBA had only remanded the traffic count question. He said the other issues that were decided by LUBA had been decided in the City's favor and should not be re-considered by the City Council.

Parker reminded the City Council that they had previously made a finding that Goal 9 of the Comprehensive Plan was not a requirement applied to the site plan application and the appellants did not raise the issue on appeal to LUBA. He recommended the City Council limit the public hearing to only the item remanded by LUBA.

City Attorney Parker said there were rules and procedures for quasi-judicial hearings which must be followed. He recommended to the City Council they allow testimony from the applicant, appellant, and interested citizens regarding items they would like the City Council to consider in the scope of the hearing, but said it would not be appropriate for testimony to include the merits of the issues.

Councilor Ahier asked when there would be an opportunity to hear concerns of the public. City Manager Young said the land use process needed to be protected. He suggested when the issue

was completed, the Council could conduct a meeting to hear from the citizens. He said staff was only trying to protect the process.

City Attorney Parker said if the Council decided to accept input on more than just the scope of the hearing, additional written testimony would be presented at that time.

Councilor Spatz said the City Council needed to decide if they supported the recommendation of the City Attorney. He said to go against their own legal counsel would not be a good idea. City Attorney Parker said it was his job to advise and guide the Council, but they had the ultimate decision. Parker said there was a risk of challenge if the Council allowed input regarding the merits of the hearing.

Councilor Dick asked if the Interchange Area Management Plan (IAMP) was a part of the traffic count remand issue. City Attorney Parker said the remanded issue was the traffic counts, not the IAMP. He again recommended that the City Council restrict the scope of the hearing to the remanded issue only.

Councilor Dick said he did want to hear from the citizens, but understood the need to protect the process. He expressed frustration that the audience did not understand the process or why they were not allowed to share their opinions. He suggested holding an additional meeting to hear testimony and said he did not want to rush the process.

It was the consensus of the City Council to hear public comments first, followed by the applicant and appellant comments.

#### Public Comments

Joe Usatine, 2426 West 13<sup>th</sup> Street, The Dalles, asked the Council to consider what would happen to the town regarding businesses closing if Wal-Mart was allowed to come to The Dalles. He said his experience of a Wal-Mart in another town had not been favorable to the town.

City Attorney Parker said it was not appropriate to talk about economic impacts and prior experiences.

Mr. Usatine asked the Council to consider the possible economic impact of a Wal-Mart to the community.

Tim Pitts, 307 West 20<sup>th</sup> Street, The Dalles, asked the City Council to consider environmental and conservation concerns, saying the proposed location was a natural area and should remain so.

Steve Kelsey, 3850 Knob Hill Road, The Dalles, asked the Council to consider the uses allowed for the property. He said changing the use to commercial put a burden on Wasco County to provide new roads. He said the applicant should have the burden to pay for development, not the County. Mr. Kelsey said he had previously served on the Wasco County Planning Commission and urged the City Council not to worry about deciding against staff recommendations.

Anya Kaufa, 202 West 13<sup>th</sup> Street, The Dalles, asked the City Council to consider the importance of community spirit and to keep The Dalles a special place for its residents.

Natalie Foster, 210 West Fourth Street, The Dalles, asked the City Council to consider more appropriate locations for a retail store, saying there were many abandoned stores and blighted areas in town that may better serve as a location.

Adam Gishner, 1314 Washington Street, The Dalles, agreed with Ms. Foster and asked the Council to also consider the impact to small business owners.

Loren Richman, 5225 Chenowith Road, The Dalles, urged the City Council to limit the scope of the hearing to the item remanded by LUBA, to place time restrictions on the hearing and to move forward with a decision. He thanked the City Council for the work they were doing.

Bill Elton, 715 Garrison Street, The Dalles, said there was not an adequate number of grocery stores for the size of the community. He said the Country was founded on competition and it was what kept us strong.

City Manager Young asked if Mr. Elton was indicating the Council should also consider positive economic conditions of the application. Mr. Elton said that was correct.

Crystal West, 307 West 20<sup>th</sup> Street, The Dalles, urged the Council to move forward, but suggested if another grocery store was needed in the community, it did not need to necessarily be a Wal-Mart.

Doug Hattenhauer, 3205 Doane Road, The Dalles, asked the City Council to consider requesting an economic impact study and to be sure the traffic study was appropriate. He said it was expensive for the average citizen to appeal a land use action, making it difficult for many people to pursue an appeal. Hattenhauer said the economic issue may not have been raised during the appeal process, but the Council could still do the right thing and require a study.

Death Meyer, 3755 Skyline Road, The Dalles, agreed with the statement of Mr. Hattenhauer, saying it was the right thing to ask for an economic impact study.

Chris Zukin, 915 West 14<sup>th</sup> Street, The Dalles, said the Planning Commission, City Council, and LUBA had all heard the application and appeals and only one issue was remanded; the traffic impact. He said the City Council should only address that one issue because LUBA had already ruled on the other issues raised under the appeal.

Elizabeth Stroh, 1314 Washington Street, The Dalles, asked the City Council to require the applicant to make sustainable energy a priority.

#### Applicant Comments

Greg Hathaway, Davis Wright Tremaine, 1300 SW Fifth Avenue, Suite 200, Portland, Oregon, representing Wal-Mart, reviewed the request to initiate remand from LUBA, submitted to the City Council. He said he had requested of staff that the Council hear from the public regarding possible issues to be considered in the scope because Wal-Mart wanted to make sure everyone was heard.

Hathaway said there had been over 40 hours of testimony at the Planning Commission and City Council hearings and that a lot of work had already gone into this application process. He said the City Council had approved the application with many conditions and expense to Wal-Mart and after being appealed to LUBA, only one issue had been remanded to the City. Hathaway said the determination by LUBA was that the City's findings failed to adequately explain why traffic counts taken on a weekday satisfied the requirements to measure the 30<sup>th</sup> highest hour volumes. He said LUBA also found that traffic counts for a weekend day may be necessary for accuracy.

Hathaway requested the Council limit the scope of the remand proceedings to the issue identified by LUBA and to submit evidence explaining why traffic counts taken on a weekday satisfy ODOT's requirements for measuring the 30<sup>th</sup> highest hour volumes for the interchange. He further requested the opportunity to submit evidence addressing the LUBA comment of taking traffic counts for the interchange on a weekend. Hathaway requested the Council to schedule a public hearing, allow Wal-Mart to submit new evidence regarding the weekend traffic counts, allow interested parties to testify regarding any new evidence related to the interchange and limit the scope of the remand hearing to the issues identified by LUBA in its final opinion and order.

#### Appellant Comments

Kenneth Helm, 16289 NW Morrison, Portland, Oregon, representing the appellant, agreed that the scope of the hearing should include a look at the 30<sup>th</sup> highest hour volume for weekends. He said if the study from DKS Associates was not correct, it could have a big impact on the Chenoweth Interchange. He asked that the traffic impact issue include evidence on the 30<sup>th</sup> highest hour for a Saturday and that the testimony allowed be broad based. Helm asked the



Council to consider in the scope the wetlands issue. He said since the time of the site plan application, Wal-Mart had discovered many more wetlands on the property, at least 32 additional wetlands. Mr. Helm said the issue should be revisited.

Louise Langheinrich, 2108 Garrison Street, The Dalles, asked the Council to consider the wetlands issue because of the high increase in identified wetlands for the property. She said the total wetlands now represented approximately nine acres or 10 city blocks and was a substantial amount of property affected.

Langheinrich asked the City Council if staff was authorized to filter the emails sent to them via the City's website. She said the Council says they want citizen input, but the emails didn't reach the Council if staff withheld them.

Michael Leash, 306 Court Street, The Dalles, said the inability to talk about the economic impact was unfair. He questioned when citizens would have an opportunity to have a discussion with the City Council regarding that matter. Leash said it seemed that the Wal-Mart attorney was threatening the City Council about the scope and what they could hear during the remand process.

Kenneth Helm said it was the City Council's discretion to open the remand hearing to new issues and recommended they broaden the scope to include not only traffic issues, but wetlands issues as well. He said if the political outlook of the City Council had changed or they had any doubt about their prior decision, they had the discretion to open the hearing to additional issues. Helm said the City Council was not dictated to do only what was remanded by LUBA.

Steve Kelsey, 3850 Knob Hill Road, The Dalles, agreed with Mr. Helm, saying the Council could find that other issues could be included in the process.

In response to a question from Mayor Lesich, City Attorney Parker said the City Council had already made a finding that the economic impact was not an appropriate criteria for the site plan review. He said this matter could have been raised on appeal to LUBA by the appellant, but it was not appealed.

Councilor Wilcox said the appellant had also not appealed to the City Council on the matter of economic impact.

Councilor Ahier questioned why the appellant had never raised the economic issues on appeal if it had been so important to them.

Applicant Rebuttal

Mr. Hathaway said he understood the City Council's frustration and said that Wal-Mart was also frustrated. He said they had already spent approximately two years on this process and had worked very hard to follow all the rules and procedures. He said they had met the application process burden. Hathaway said the appellants had failed to raise economic impact on appeal to both the City Council and to LUBA.

Hathaway said it would be unfair to the applicant to expand the scope of the remand as it was the only issue left unresolved. He asked the City Council to define the scope as limited to the one issue. Mr. Hathaway said the LUBA remand included a proposal to review the weekend traffic volume, which had previously been submitted by the appellant for a Sunday. He said it was contrary to all other proceedings to now ask for the counts to be on a Saturday.

Mr. Hathaway said it was inaccurate for the appellant to say the wetlands delineation had not been done properly. He said LUBA had ruled it was done correctly by allowing the State Division of Lands and the Corps of Engineers to make that determination through their permitting process. Hathaway said the reason there were additional wetlands identified was because they had decided to submit the permit application for the entire piece of property, 67 acres. He said it was an unfair statement that Wal-Mart had previously misstated the wetlands.

Scott Franklin, Project Manager for Pacland, 6400 SE Lake Road, Portland, Oregon, said the delineation had taken place for the entire 67 acre parcel and they were currently in the permitting phase of the process. He said considering the entire parcel would provide better protection for the site. Mr. Franklin said this did not change the City Council's approach to allow the State Division of Lands and the Corps of Engineers to ensure wetlands compliance through their permitting process.

Mr. Hathaway requested the City Council to proceed by deciding the scope of the hearing and to schedule the public hearing.

City Council Deliberation

Senior Planner Gassman said staff had received several emails that did not pertain to the scope of the hearing and four that did pertain. The four emails pertaining to the scope of the remand hearing were submitted as testimony (attached as Exhibit "A").

Councilor Spatz asked if staff held the emails because of concerns they would cause ex-parte contact. City Manager Young said staff had informed the City Council the emails had been received and that unless it would impact the integrity of a land use process, the emails would be

forwarded. City Attorney Parker agreed, saying the emails could have been considered as ex-parte contact.

Councilor Ahier asked if a letter was sent to City Council in the mail, whether staff would open and read the letter. City Manager Young said staff routinely opened City Council mail.

Councilor Dick said if Wal-Mart welcomed the comments from citizens at this meeting, they should not be concerned if City Council read emails about the application.

City Manager Young recommended the City Council take legal advice from the City Attorney and not from the attorneys providing testimony.

Mr. Hathaway said he respected the City Attorney and the advice he provided to the City Council. He said he had welcomed comments pertaining to what the scope of the remand hearing should include, but would have objected to people testifying as to the merits of the case.

#### Recess

Mayor Lesich called a recess at 8:12 p.m. to allow the City Council time to read the four emails pertaining to the scope of the hearing.

#### Reconvene

The meeting reconvened at 8:22 p.m.

It was moved by Wilcox and seconded by Ahier to schedule a public hearing on December 14, 2009 to consider the request to proceed with the remand of Wal-Mart's site plan review application; the scope of the remand hearing be limited to the issues identified by LUBA in its Final Opinion and Order related to the Chenoweth Interchange, as set forth in the applicant's written request to proceed with the remand; the applicant be allowed to submit new evidence as set forth in the applicant's written request to proceed with the remand; and interested parties be allowed the opportunity to testify regarding any new evidence concerning the issues related to the Chenoweth Interchange which would be considered at the December 14, 2009 public hearing.

Councilor Wilcox said the City Council should move forward. He said no different information had been presented at this meeting. He said LUBA had upheld the City's approval regarding the wetlands and that the appellants had provided deceptive information by not stating the additional wetlands were included because the applicant had submitted approval for the entire 67 acre parcel. Wilcox said no one had ever mentioned using a 30<sup>th</sup> highest hour for volume on a Saturday and the City should stay with the proposal to use Sunday counts. He said the appellant

should stop introducing new suggestions that had never been considered in any of the hearings and that they should have appealed regarding the economics issue. Wilcox said if people were angry that economic issues could not be discussed they should be angry with the attorney because it was his fault for not raising it on appeal. He recommended the City Council limit the hearing to what was remanded by LUBA and follow the staff recommendation.

Councilor Ahier said LUBA had found the City acted correctly regarding the wetlands issue and did not believe it should be reconsidered. He agreed the process should move forward and be finalized.

#### Extend the Time of the Meeting

It was moved by Spatz and seconded by Wilcox to extend the time of the meeting to 9:00 p.m. The motion carried unanimously.

#### Council Deliberation, Continued

Councilor Dick said the Council was bound to follow land use rules, but he was second guessing the original decision to rezone the property. Dick said he was not impressed with ODOT's methodology to resolve traffic issues and had concerns regarding the impact on the Chenoweth Interchange. Councilor Dick said he supported slowing down the process and looking at the 30<sup>th</sup> highest hour of volume for both Sunday and Saturday.

Councilor Wood said if she had to consider the zone change for the property again, she would not have supported it. She said she wished the Council could have an economic impact study and wished the appellant had raised the issue on appeal. Wood said the Council should proceed with the remand for the traffic issue, but allow for a broad scope of testimony regarding that issue.

Councilor Spatz said he was not opposed to receiving testimony regarding Saturday traffic numbers. He said the economic study had never been appealed which prevented the Council from considering that information. Spatz said he hoped that matter could be discussed at a later time.

It was moved by Dick and seconded by Spatz to amend the motion to allow for testimony regarding the 30<sup>th</sup> highest hour traffic volume for Saturday calculations and to allow testimony and evidence from the public.

Community Development Director Durow said a seasonal adjustment calculation could be applied to allow for traffic counts to be done at any time. He said a survey had been conducted using Sunday, but did not believe a study had included Saturday traffic counts.

Mr. Hathaway said they had prepared a traffic study for Sunday traffic counts, based on the LUBA remand, but had not included Saturday figures because it was not relevant to the LUBA remand. He said being required to conduct an additional study could slow the decision for months.

Councilor Wilcox said he opposed the amendment, saying it was not realistic to ask for additional traffic information beyond what LUBA stated.

City Manager Young asked for clarification regarding the Saturday figures, asking if Council wanted the applicant to provide a study or if they wanted to allow testimony regarding Saturday counts.

It was the consensus of the Council they wanted to allow testimony but were not asking the applicant to provide the additional study.

The amendment to allow for testimony regarding the 30<sup>th</sup> highest hour traffic volume for Saturday calculations and to allow testimony and evidence from the public was voted on and carried; Wilcox opposed.

The amended motion to schedule a public hearing on December 14, 2009 to consider the request to proceed with the remand of Wal-Mart's site plan review application; the scope of the remand hearing be limited to the issues identified by LUBA in its Final Opinion and Order related to the Chenoweth Interchange, as set forth in the applicant's written request to proceed with the remand; the applicant be allowed to submit new evidence as set forth in the applicant's written request to proceed with the remand; and interested parties be allowed the opportunity to testify regarding any new evidence concerning the issues related to the Chenoweth Interchange which would be considered at the December 14, 2009 public hearing and to allow for testimony regarding the 30<sup>th</sup> highest hour traffic volume for Saturday calculations and to allow testimony and evidence from the public was voted on and carried; Wilcox opposed.

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**ADJOURNMENT**

Being no further business, the meeting adjourned at 8:50 p.m.

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Submitted by/  
Julie Krueger, MMC  
City Clerk

SIGNED:

  
Nikki L. Lesich, Mayor

ATTEST:

  
Julie Krueger, MMC, City Clerk

## Richard Gassman

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**From:** Ken Helm [kmhelm@comcast.net]  
**Sent:** Monday, November 23, 2009 8:22 AM  
**To:** Gene Parker; Richard Gassman  
**Subject:** City Council hearing  
**Attachments:** Remand Leter - Nov 23 2009.doc

Gene,

Attached is a letter concerning the City Council hearing this evening. Will you please provide it to the Council. I expect to be at the hearing and will bring hard copies as well.

Thank you.

Ken

Kenneth D. Helm  
Attorney at Law  
16289 NW Mission Oaks Dr.  
Beaverton, Or 97006  
503.753.6342

definitely not in the interest of the overall vitality of The Dalles. As new small business owners in The Dalles, we urge you to reject the Wal-Mart Supercenter.

Sincerely, Elizabeth Stanek and John Ratts



submitted wetland maps to the city based on Wal-Mart's studies which show several times more wetlands than were originally identified in the site plan approved by the City Council.<sup>1</sup> While LUBA agreed with the city as to the wetlands that were identified in Wal-Mart's original site plan, LUBA's decision cannot be reasonably extended to these newly discovered wetlands and vernal pools.

Based on its prior findings, the city was forced to argue at LUBA that the wetlands identified on Wal-Mart's original site plan were insignificant and not worthy of protection under the city code. Is that truly the City Council's position with regard to wetlands inside the city's jurisdiction? Certainly, the City Council will want to review the newly discovered wetlands on the site to determine whether those wetlands are entitled to some level of protection under the city code. CFRD requests that the City Council take up these questions as part of the remand proceedings.

Please provide these comments to the City Council for this evening's hearing and make them a part of the record in this matter.

Thank you for the opportunity to comment.

A handwritten signature in black ink, appearing to read "Kenneth D. Helm". The signature is written in a cursive, flowing style.

Ken Helm

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<sup>i</sup> CFRD submitted these maps subsequent to LUBA's remand and requested that the maps be made part of the file for both the subdivision approval 62-08 and 379-08. CFRD now requests that the maps be made part of this remand record by this reference.

## Richard Gassman

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**From:** Izetta F. Grossman  
**Sent:** Monday, November 23, 2009 8:26 AM  
**To:** Richard Gassman; Nolan Young; Gene Parker  
**Subject:** FW: To Mayor Lesich and Councilors  
**Attachments:** testimony to council.pdf

Izetta Grossman  
Executive Secretary  
City Manager's Office  
City of The Dalles  
313 Court St  
The Dalles, OR 97058  
541-296-5481 Ext 1119  
541-296-6906 Fax

-----Original Message-----

**From:** John Nelson [mailto:joteg@gorge.net]  
**Sent:** Saturday, November 21, 2009 10:38 PM  
**To:** Izetta F. Grossman  
**Subject:** To Mayor Lesich and Councilors

Attached as a pdf is my testimony to the City Council on the action item concerning the LUBA remand for the Council Meeting of November 23, 2009.

Thank you,

John Nelson

524 West 3rd Place  
The Dalles, OR  
97058

[joteg@gorge.net](mailto:joteg@gorge.net)

To: Mayor Lesich and Councilors

I am providing you my written testimony on the action item being considered at the November 23, 2009 Council meeting which is to determine the scope of issues to be considered during the yet to be determined remand hearing on approval of the site plan for the proposed Wal-Mart store.

In addition to the traffic issue that LUBA has remanded to The City of The Dalles I urge you to broaden the scope of issues to be considered to include consideration of new information as to the correct number of wetlands that will be destroyed in the development of the subdivision which includes the Wal-Mart site plan, the degrading effects such development might have on nearby Chenoweth Creek, and consideration of the impact of this development on existing local businesses which you have not addressed.

In the LUBA appeal the petitioners (of which I was one) argued that the wetlands located on site were "significant natural features" and that the Land Use Development Ordinance requires the "elements of the site plan are to be arranged to preserve and maintain public amenities and significant natural features." We further argued that the site plan failed to show all the wetlands located on the property and thus failed to preserve these significant natural features as required by LUDO. The city interpreted the phrase "significant natural features" to include those contained in the "natural resource inventories in either the 1982 Comprehensive plan or the 1989 Riverfront Plan". Because these wetlands were not shown on either of these documents the city reasoned they were not "significant natural features".

The Port of The Dalles Interchange Wetland Monitoring Report of 2002 states that the Wetlands, which were later destroyed by the construction of the I-84 interchange, and which were near the vernal wetlands on the Wal-Mart site and of similar type, were not high functioning vernal wetlands, but nevertheless "were located within the Chenoweth watershed and were suspected to improve water quality in Chenoweth Creek, a stream supporting federally listed fish species." Chenoweth Creek is designated as a "water quality limited" stream under the Federal Clean Water Act. These

wetlands occupied about 1 acre of land and were mitigated for on a site adjacent to the proposed Wal-Mart site. The vernal wetlands which are located within the subdivision which will encompass the Wal-Mart site are now defined as numbering 40, not the approximate 9 that were shown on the documents upon which you made your decision to approve the site plan. These vernal wetlands are larger in scope, occupying 9 acres, and have a greater role to play in maintaining the water quality of Chenoweth Creek, than those already destroyed but considered important! If nothing else the city's reasoning not to consider these wetlands significant because they were not mentioned in former documents demonstrates a real weakness in the Land Use Development Code and shows the city underestimates the impact to all such wetlands in its jurisdiction.

The Comprehensive Plan is our guide to ensure that the city's vision for growth is achieved in an orderly manner. This includes economic factors, such as the impact of new development on existing local business. During the hearings in the early spring of 2009, residents were not allowed to discuss these potential economic impacts. During the subdivision hearing the citizens should have been able to hear economic evidence. When the citizens were told by council members they would be able to present economic arguments at the site plan hearing, that is the time the city attorney should have told the Councilors that it would not be possible, and that the code sections that applied to the site plan did not address economics. He, instead, remained silent. The site plan was not the proper place for an economic discussion. The council should give the opportunity to its citizens to finally have this discussion with Wal-Mart representatives at the remand hearing.

Thank you for reading and considering the merits of this testimony.

John Nelson  
524 West 3rd Place  
The Dalles, OR  
97058

## Richard Gassman

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**From:** Izetta F. Grossman  
**Sent:** Monday, October 19, 2009 1:09 PM  
**To:** Richard Gassman  
**Subject:** FW: Wal-Mart

Dick

Gene said I should forward all these to you - so enjoy ☺

Izetta Grossman  
Executive Secretary  
City Manager's Office  
City of The Dalles  
313 Court St  
The Dalles, OR 97058  
541-296-5481 Ext 1119  
541-296-6906 Fax

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**From:** Elizabeth Stanek [mailto:stanratt@mowinet.com]  
**Sent:** Friday, October 16, 2009 8:43 PM  
**To:** Izetta F. Grossman  
**Subject:** Wal-Mart

Dear Mayor Lesich, Now that the LUBA has tossed the Wal-Mart case back to the City Council, I hope you will use this opportunity to hear what opponents are saying about traffic and wetlands. The Dalles continues to revitalize its central commercial district, to attract environmental tourists, and to find alternatives to commercial sprawl. Yet the proposal submitted by PACLAND for a Wal-Mart nearly three times the size of a football field is just out of scale with the size of your small community. During the 1990s, The Dalles added roughly 1,000 people to its population base, but even adding in the entire population of Wasco County, you still don't need a store this big. Even though this project is located on commercial land, the Planning Commission and the City Council still have the right to reject a project because of its adverse impact in areas like existing economic activity, traffic and roads, and the environment. You can ask that a project be reduced in size, and in many communities, developers have respected local desires for smaller projects. The project does not fit The Dalles market. It's a classic example of suburban sprawl, and is largely incompatible with your land use goals. Hood River rejected a Wal-Mart superstore, as have a number of other communities in Oregon. You don't have to accept a one-size-fits-all mentality. The only thing that stands between PACLAND gobbling up a major piece of The Dalles, is the Citizens for Responsible Development. Madame Mayor, you now have a second chance to get this analysis right, and to grow smart. This Wal-Mart is

definitely not in the interest of the overall vitality of The Dalles. As new small business owners in The Dalles, we urge you to reject the Wal-Mart Supercenter.

Sincerely, Elizabeth Stanek and John Ratts

## **Richard Gassman**

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**From:** Izetta F. Grossman  
**Sent:** Monday, November 09, 2009 2:40 PM  
**To:** Gene Parker; Richard Gassman; Nolan Young  
**Subject:** FW: To the Mayor and members of The Dalles City Council re:Wal-Mart concerns

Gene,

This just came in – it does address the IAMP – can I send it on?

This person called this AM and asked how to get something to the council and I said this was the fastest way.'

If you say I can't give this to council then you need to send her back an email explaining why so I don't look like a big fat liar... or even a skinny little liar. I don't do liar. ☺

*Izetta Grossman*  
Executive Secretary  
City Manager's Office  
City of The Dalles  
313 Court St  
The Dalles, OR 97058  
541-296-5481 Ext 1119  
541-296-6906 Fax

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**From:** Deborah Blair [mailto:dmbclair@gorge.net]  
**Sent:** Monday, November 09, 2009 2:25 PM  
**To:** Izetta F. Grossman  
**Cc:** dmbclair@gorge.net  
**Subject:** To the Mayor and members of The Dalles City Council re:Wal-Mart concerns

November 9, 2009

**To: the Mayor and members of the City Council of The Dalles**  
**Re: Proposed construction of a Super Wal-Mart store in our community**

**Dear Friends:**

I am very concerned, for several reasons, about the potential impact of a Super Wal-mart store in our small town.

First, I live on the west side of town and am concerned about the way increased traffic will affect

access to I-84 and neighborhoods at our end of town.

I made a point of attending the meeting at the Civic Center this summer when the IAMP

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was presented. I also attended the last meeting of the City Council. What surprised me about that council meeting was that over an hour passed before the word "Wal-Mart" was even mentioned. Up to that point, the discussion about the IAMP was all couched in provisional and conditional terms, as though the big "elephant" in the hearing room wasn't Wal-Mart. It was only when the public was invited to comment that the immediate need for the IAMP was clearly identified as being caused by Wal-Mart. Theoretically, it stands to reason that future community growth may require I-84 interchange adjustments, but it is solely because of Wal-Mart's plans that these elaborate considerations of future traffic needs are pending now.

Second, I have read that Wal-Mart's studies of their impact on local traffic congestion were

declared inadequate and warrant a review by the Oregon Land Use Board.

It appears that Wal-Mart's study of the impact on adjacent wetlands may also be inadequate by having omitted as many as 40 wetland areas. If this is the case, not

only is a more thorough analysis of wetland impact urgently required, but it further undermines my confidence in Wal-Mart's readiness to be a constructive and honest partner in our community's commercial future.

Finally, I have deep reservations about the impact of this super store upon our local stores.

There are enough empty store fronts in town as it is. We should assist those businesses

that remain, not threaten them with Wal-Mart's cut rate pricing, obtained in some cases by cut-throat employee policies.

In addition to the obvious economic, traffic and environmental changes that Wal-Mart

could bring to The Dalles will be what I deem "character-changing" alterations to our small town. Do we really want to become a "big Box" town? I hope not!

I urge you to hold a hearing to request more accurate data from Wal-Mart on both the wetlands and traffic issues, so that there is additional opportunity to consider these matters and assess the real impact of any increased costs that have not been accurately measured.

*Sincerely,  
Deborah Blair*

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950 Pomona Street # 187  
541 296-6133

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Exhibit "A"  
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