

Grant Beck

From: Ed Wiltsie [ed@jwmorrisette.com]
Sent: Friday, May 15, 2009 12:29 PM
To: Grant Beck
Subject: City of Yelm - Water Comp Plan
Attachments: Edward A Wiltsie P E .vcf

Dear Mr. Beck,

The following are my comments relating to the 2008 Revision of the Yelm Comprehensive Water Plan:

1. As Thurston Highlands is now in default, the primary premise of the plan appears to be invalid. The final determination on the default issue appears to be scheduled for 25 May 2009, at which time the subject property may formally change hands, firmly negating the referenced premise. I request that you extend the deadline for these comments one additional week after the 25 May 2009 deadline to allow more specific and poinient comment.
2. In the event that the above deadline does pass and the default conditions is finalized, the next deadline is 05 June 2009 when the subject property will be offered at auction. In which case the ownership of the property will very likely change. As you have no pending agreement with the potential new property owner with regard to the acquisition of water rights or the Master Planning process (City contract is with Thurston Highlands, LLC, signed by Mr. Steve Chamberlain), the Item 1 referenced premise will be further removed from reality. As such, I further request that you extend the deadline for comment until one week after the auction (if the 25 May 2009 deadline passes and the property is offered at auction).
3. Based on the foregoing, it is clear that all of the basic assumptions beyond the 2009 projection made in the Appendix A Golder Report are highly questionable, not from a factual basis necessarily, but from a reality basis. As such, the entire Comprehensive Plan should be returned to the City Staff and its consultants for a complete restructuring and resubmitted to the public in a format and with content that has substance in the reality of the moment.
4. As I pointed out at the City Council meeting last Tuesday, City Code Title 17 clearly states the following:

17.62.045 Master plan permit processing.

Applications for conceptual master plans, final master plans, and any project for which environmental review other than DNS or MDNS is required shall follow the guidelines set forth below:

- A. At the time the application is filed, the city shall establish an account for permit processing for each major phase of the approval process. In addition to the fees payable with the application, the applicant or applicants as appropriate shall pay to the city the sum of \$5,000 for each plan to be reviewed for approval.
- B. The funds so paid shall be deposited in an account, for the benefit of the city to pay engineering, legal, and other fees incurred by the city in connection with the project review. Such fees shall be paid at the customary rates and charges applicable under the city's agreements with the consultants. The city shall be responsible for assigning work activities and assuring the work billed is reasonable and appropriate to the project assigned. The city's determination shall be conclusive on such matters.
- C. Consultants hired to review the project for the city shall be advised that the city's liability is limited to the funds on deposit and that they are to stop work if at any time the funds on deposit are insufficient to pay for work in progress.
- D. The city shall advise the applicant whenever funds on deposit are less than \$1,000 or are anticipated to be insufficient to pay for required services. The fund may be replenished in increments of \$5,000 or more. Any interest earned on the account may be used by the city to pay for services chargeable to the fund.

E. At the conclusion of the planning process, or the expiration of more than one year with no activity, the permit application may be terminated and the balance of the funds, after deducting all charges due the city, may be returned to the applicant.

F. The city is to use reasonable prudence and diligence in the management of the consultants reviewing a project, but the scope and response of such review services shall be solely in the city's discretion. Further, all work done by the consultants shall belong to the city and in the case of work by counsel, the city and the counsel shall retain attorney-client relationship and nothing in this process shall create an attorney-client or other relationship between the applicant and the city's retained consultant or counsel.

G. Where the city has incurred expenses in connection with project review on a property, and said expenses have not been reimbursed, together with interest at 5.6 percent on any sums delinquent over one year, the city shall take no steps to process any application on such properties until such past due payments are paid. (Ord. 651, 1999).

making clear the requirement that the City hold on deposit such funds as are needed to pay the consultants engaged to perform reviews on projects such as the Thurston Highlands Master Planned Community. The City has clearly ignored and violated its own ordinance numerous times in allowing the balance due from Thurston Highlands LLC to climb to over \$121,000. Item G of the above clearly states that "the city shall take no steps to process any application on such properties until such past due payments are paid. (Ord. 651, 1999)." This suggests that if the default sticks and the property is auctioned, the subject property is "limbo" until all debts are satisfied, making the schedule deadlines used in the Comprehensive Plan totally inaccurate. On this basis, I again ask that the Comprehensive Plan be remanded back to the City Staff and Consultants for complete revision as the basic assumptions are in error.

5. The Comprehensive Plan and its appendices clearly indicate that the water levels in the aquifer proposed for development in Thurston Highlands area will be drawdown for a distance of at least 5 miles changing the existing condition of the aquifer in both the downstream and upstream areas. As this aquifer is not solely in the possession of the City of Yelm and is jointly accessed by numerous private landowners and businesses, there will be adverse impacts on these conjoined users. These impacts are predicted to be very real from the Golder Studies. As such, it is highly probable that these other aquifer users could be damaged by the City's proposed actions, opening the City to a liability for damages. This conditions has not been adequately addressed in the Comprehensive Plan or its supplemental documents. It has certainly not been address by the standard Washington State Department of Ecology

vehicle for such assessing such potentially adverse conditions, a Water Rights Impairment Analysis. I therefore, request that prior to moving forward further and subsequent to satisfying Items 1, 2, 3 and 4 above, that City Staff and Consultants undertake a Water Rights Impairment Analysis and include its results in a revised version of the 2008 Comprehensive Plan.

Edward A. Wiltsie, PE
Private Citizen