

ORDINANCE NO. 2458

AN ORDINANCE modifying Chapter 13.88 of the Camas Municipal Code by revising the regulations relating to stormwater system development charges.

THE COUNCIL OF THE CITY OF CAMAS DO ORDAIN AS FOLLOWS:

Section I

Section 13.88.010 of the Camas Municipal Code is amended to provide as follows:

**13.88.010 - Definitions.**

For the purpose of this chapter:

A. "City" means the City of Camas, Washington, a municipal corporation created and existing under the laws of the State of Washington.

B. "City of Camas Stormwater System" means a system of stormwater drainage, transportation, and treatment facilities utilized, constructed, and maintained by the City of Camas. Said facilities include but are not limited to catch basins, piping, culverts, crossings, ditches, stream courses, and detention and treatment facilities.

C. "Commercial Property" means nonresidential real property used for the purpose of providing retail, wholesale and transportation services, and includes all uses of real property classified in Chapter 18.05.020 as Neighborhood Commercial (NC), Community Commercial (CC), Regional Commercial (RC), and Downtown Commercial (DC).

D. "Development" means the subdivision or minor land partitioning (short platting) of real property, the construction of a residence or residential structure, the construction of a commercial building or buildings, the construction of a light industrial building or buildings, or the construction of any other structure, building or improvement with impervious groundcover equivalent to or exceeding that associated with a subdivision or residential, commercial and light industrial buildings and structures. "Development" does not include additions to existing structures nor the construction of accessory improvements and structures for existing structures.

E. "Impervious groundcover" means those hard-surfaced areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions pre-existent to development, and shall include, without limitation, such surfaces as rooftops, asphalt or concrete sidewalks, paving, driveways, parking lots, walkways, patio areas, storage areas and gravel, oil, macadam or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

F. "Light Industrial property" means nonresidential and noncommercial real property used for the purpose of manufacturing, assembling, repairing or servicing goods and products, and includes all uses of real property classified in Chapter 18.05.020 as Light Industrial (LI) and Light Industrial-Business Park (LI/BP).

G. "Plan" means the comprehensive storm drainage utility plan created by Section 13.88.030 of this chapter.

H. "Public property" means real property owned by the city, the state, any municipal corporation of the state, or the United States Government or any of its agencies.

I. "Separate drainage basin" means a geographically identified area of the

city from which stormwater is collected and managed through a stormwater drainage subsystem of the city stormwater drainage system.

J. "Stormwater system development charge" means that fee charged to property which is developed subsequent to the effective date of the ordinance codified in this chapter which fee shall reflect such property's proportionate share of the capital costs of the stormwater drainage system.

K. "Stormwater drainage subsystem" means a portion of the city's stormwater drainage system designed to serve a separate drainage basin which functions independently of other stormwater drainage subsystems.

L. "Utility" means the city stormwater drainage utility created by Section 13.88.020 of this chapter. (Ord. 1707 § 1, 1989).

## Section II

Section 13.88.080 of the Camas Municipal Code is amended to provide as follows:

### **13.88.080 Fisher Basin Stormwater System Development Charge Imposed**

A. Pursuant to the authority conferred upon cities and towns by RCW 35.92.020 and RCW 35.92.025, the City Council of the City of Camas finds that property owners in the Fisher Basin drainage basin that seek to connect property to the stormwater sewer system of the City should be assessed a charge in order that such property shall bear its equitable share of the cost of the stormwater sewer system. The Council further finds that the charge should be based upon the property owners anticipated use of the stormwater sewer system as related to the historical cost of the stormwater sewer system and the projected cost of additions to the stormwater sewer system to meet new demand. That portion of the charge based upon the historical cost of the sewer system shall be measured by the un-depreciated value of the stormwater sewer system and plant in service at the time the charge is imposed. That portion of the charge based upon the projected cost of future improvements shall be based upon appropriate studies by engineers and/or financial consultants. The charge imposed by this chapter shall be denominated as a "stormwater sewer system development charge" and shall be in addition to any stormwater sewer connection or permit fees imposed by other ordinances of the City.

B. There is hereby imposed upon every property in the Fisher Basin drainage basin that subsequently connects to the City of Camas stormwater system a stormwater system development charge, which charge shall be assessed at the rates set forth in Section 13.88.100 of this chapter. Such stormwater system development charge shall become due and payable at such time as said property connects to the City of Camas water, sanitary sewer, and stormwater systems.

## Section III

Section 13.88.090 of the Camas Municipal Code is amended to provide as follows:

### **13.88.090 Exemption:**

Any property located within the Fisher Basin drainage basin that does not drain into the City of Camas stormwater system shall be exempt from the stormwater system development charge. Whether a particular parcel of property does not drain into the City of Camas stormwater system shall be determined upon the basis of appropriate engineering studies.

## Section IV

Section 13.88.100 is amended to provide as follows:

**13.88.100 - Rates:**

The stormwater system development charge shall be assessed at the following rates:

Property Classification	Rate per Housing/Living Unit
R-20 (low residential)	\$620
R-15 (low residential)	\$530
R-12 (low residential)	\$440
R-10 (medium residential)	\$570
R-7.5 (medium residential)	\$410
R-6 (high residential)	\$610
R-5 (high residential)	\$540
MF, Condos, Attached Houses	\$245
Duplexes	*

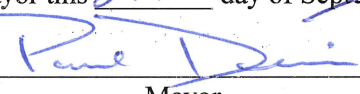
\* Each unit of a duplex is 1/2 of the stormwater development charge for applicable property classification.

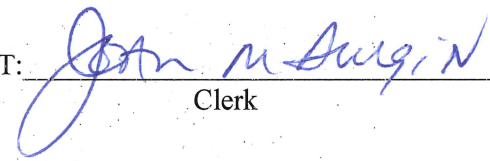
Property Classification	Rate per Acre
Commercial	\$1,096 per acre
Light Industrial	\$2,178 per acre
Public	\$1,742 per acre

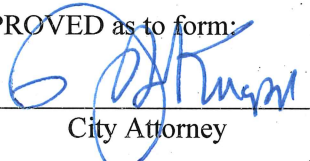
Section V

This ordinance shall take force and be in effect five (5) days from and after its publication according to law.

PASSED by the Council and APPROVED by the Mayor this 2nd day of <sup>October</sup>~~September~~, 2006.

SIGNED:   
Mayor

ATTEST:   
Clerk

APPROVED as to form:  
  
City Attorney

# LANDERHOLM, MEMOVICH, LANSVERK & WHITESIDES, P.S.

ATTORNEYS AT LAW

805 Broadway, Suite 1000  
P.O. Box 1086  
Vancouver, WA 98666-1086

www.landerholm.com

Vancouver (360) 696-3312  
Portland (503) 283-3393  
Facsimile (360) 696-2122  
Email [randy.printz@landerholm.com](mailto:randy.printz@landerholm.com)

Randall B. Printz

RECEIVED

JUL 20 2006

CITY OF CAMAS  
MAYOR'S OFFICE

July 19, 2006

Monte Brachmann  
Public Works Director  
616 NE 4th Ave  
Camas, Washington 98607

City of Camas, Washington  
City Council  
c/o Lloyd Halverson, City Administrator  
P.O. Box 1055  
Camas, WA 98607

**Re: STORM WATER DEVELOPMENT CHARGE  
Stoneleaf**

Dear Mr. Brachmann:

This office represents the owners and building permit applicants of the development known as Stoneleaf. The Stoneleaf project is located in the City of Camas, north of the intersection of NW Pacific Rim Boulevard and SE Payne Road. *See*, Exhibit A. The project consists of constructing 52 multifamily residences, private streets, and open spaces on 9.09 acres. The project develops 7.06 acres of the total site.

As you are aware, the City of Camas, pursuant to CMC 13.88, required the Applicant to pay a Fisher Basin Storm Water Development Charge for this multi-family development at the residential rate of \$3,049.00 per acre. (The Storm Water Development Charge is also referred to as a Drainage Utility Fee.) This fee was due upon issuance of building permits for the development. The project has gone through minor design modifications since 2004 and the Applicant has paid this drainage fee for storm water management and mitigation under protest. *See*, Exhibit B. The fee amount of \$21,525.94 was paid based on 7.06 acres.

Upon payment of this fee, the City agreed that the issue of whether the fee is applicable to the Stoneleaf project would be brought before the City Council for decision. The City also agreed that any collection of the drainage fee prior to the Council rendering a decision on this issue shall be held in escrow by the City.

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**LEGAL ISSUE**

When the City requires, as a condition of development approval, design and construction of mitigation for storm water impacts and then charges that same development a storm water development charge, the City violates RCW 82.02, since the storm water development charge is an arbitrary and duplicative fee for the same impact.

**DISCUSSION:**

RCW 82.02.020 provides as follows:

Except as provided in RCW 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land.

Based on the plain language of the Washington State Legislature, the authority of the City of Camas to impose "taxes, fees or charges, either direct or indirect...on the development..." is limited and determined by RCW 82.02.050 - .090. The actions of the City of Camas are regulated by these statutes. Requiring this developer to mitigate for storm water impacts by constructing treatment and detention facilities equates to a direct or indirect fee or charge.

RCW 82.02.050 provides as follows:

- (1) It is the intent of the legislature:
  - (a) To ensure that adequate facilities are available to serve new growth and development;
  - (b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
  - (c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

...

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(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

It is our belief that a local jurisdiction cannot both require a developer to construct infrastructure to mitigate its impact and then charge them a fee for that same mitigation. As set forth in RCW 82.02.020 and RCW 82.02.050(1)(c), the Washington State Legislature concurs. In this case, the developer has fully constructed treatment and detention facilities that cause the storm water leaving the site, to be treated and detained at a non erosive rate; all in furtherance of, and in compliance with, the City's storm water ordinance. Therefore, the developer is fully mitigating its storm water impacts. The City's imposition of this impact fee is in derogation of the statutes cited herein, because the fees are duplicative "for the same impact." In short, the City of Camas is requiring Stoneleaf to pay twice for the same thing.

Furthermore, the Drainage Report for Stoneleaf prepared by MGH Associates is in support of our position herein. *See*, Exhibit C. Section D of the Drainage Report provides as follows:

The project discharges to a wetland at the northeast corner of the site at pre-developed rates. The drainage path ¼ mile downstream and beyond is undeveloped and unnamed wetlands in the Fisher Basin. The area ¼ mile downstream is known as the 'Fisher Swale.'

Section D of the Drainage Report includes a map of the downstream analysis, which clearly shows that the direction of flow does not terminate in an area controlled by the City of Camas. Since the project discharges into an area which lies outside the City's jurisdiction and does not impact the area in which the drainage fee is intended to provide mitigation for, imposition of this impact fee is unlawful.

We ask that you consider these issues. We look forward to working with your Staff to resolve these issues. Thank you in advance for your time reviewing this letter.

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Re: Storm Water Development Charge  
July 19, 2006  
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Respectfully Submitted,

Landerholm, Memovich, Lansverk  
& Whitesides, P.S.



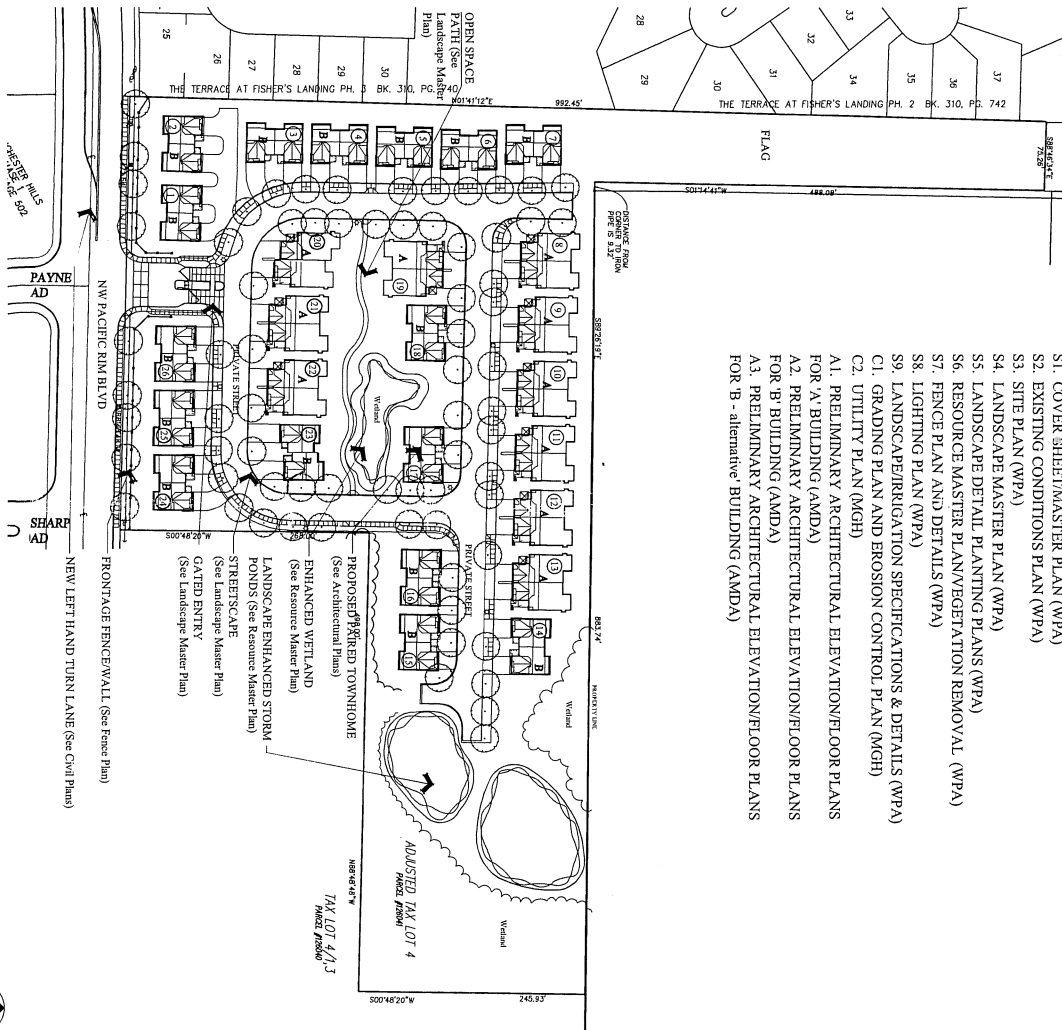
RANDALL B. PRINTZ, WSBA #13234  
Of Attorneys for the Owners of Stoneleaf

# STONELEAF

STONELEAF LLC

SHEET INDEX:

- S1. COVER SHEET/MASTER PLAN (WPA)
- S2. EXISTING CONDITIONS PLAN (WPA)
- S3. SITE PLAN (WPA)
- S4. LANDSCAPE MASTER PLAN (WPA)
- S5. LANDSCAPE DETAIL PLANTING PLANS (WPA)
- S6. RESOURCE MASTER PLAN/VEGETATION REMOVAL (WPA)
- S7. FENCE PLAN AND DETAILS (WPA)
- S8. LIGHTING PLAN (WPA)
- S9. LANDSCAPE/IRRIGATION SPECIFICATIONS & DETAILS (WPA)
- C1. GRADING PLAN AND EROSION CONTROL PLAN (MGH)
- C2. UTILITY PLAN (MGH)
- A1. PRELIMINARY ARCHITECTURAL ELEVATION/FLOOR PLANS FOR 'A' BUILDING (AMDA)
- A2. PRELIMINARY ARCHITECTURAL ELEVATION/FLOOR PLANS FOR 'B' BUILDING (AMDA)
- A3. PRELIMINARY ARCHITECTURAL ELEVATION/FLOOR PLANS FOR 'B' - alternative BUILDING (AMDA)



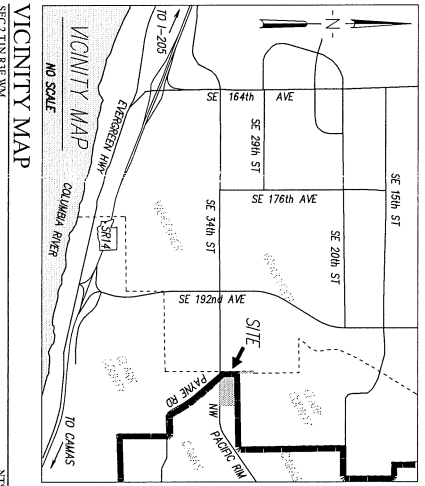
**MASTER PLAN**  
 SITE SUBMITTED BY: STONELEAF LLC  
 ADJUSTED TAX LOT 4, PARKER, 15801



Camas, WA

**PROJECT TEAM**

- |  |   |
|--|---|
| <p><b>Applicant:</b><br/>                 American Pacific Communities<br/>                 Contact: David Lightfoot<br/>                 16420 SE Macmillan<br/>                 Vancouver, WA 98685<br/>                 Phone: 503-944-3113 FAX: (503) 834-7900<br/>                 email: david@lightfoot.com</p>                             | <p><b>Surveyor:</b><br/>                 Munster &amp; Glaeser Surveying<br/>                 Contact: Ed Deery<br/>                 104 West 9th St, Suite 307<br/>                 Vancouver, WA 98660 (509) 729-0413<br/>                 email: ed@munster.com</p>  |
| <p><b>Legal Counsel:</b><br/>                 Landholm, Menovich, Lanewick<br/>                 and Whitehead P.S.<br/>                 Contact: Randy Frie<br/>                 P.O. Box 1016<br/>                 Vancouver, WA 98666<br/>                 (509) 696-5312 FAX: (509) 696-2122<br/>                 email: randy@landholm.com</p> | <p><b>Civil Engineering:</b><br/>                 MGH Associates<br/>                 Contact: Fred Gamett<br/>                 104 West 9th St, Suite 307<br/>                 Vancouver, WA 98660 (509) 729-0413<br/>                 email: fred.gamett@mgassociates.com</p>   |
| <p><b>Natural Resources:</b><br/>                 The Resource Company, Inc.<br/>                 Contact: Kevin Caser<br/>                 1014 W. Franklin St.<br/>                 Vancouver, WA 98660<br/>                 (509) 696-9999<br/>                 email: kevin@trc-inc.org</p>  | <p><b>Land Planning/Landscape Architecture:</b><br/>                 Western Planning Associates, Inc.<br/>                 Contact: William R. Horning, AICP<br/>                 P.O. Box 607019<br/>                 Portland, OR 97239<br/>                 (503) 294-0222 FAX: (503) 294-0223<br/>                 email: bill@westernplanning.com</p> |
| <p><b>Geotechnical Engineer:</b><br/>                 Geotechnical Resources<br/>                 Contact: Stan Kelly<br/>                 7223 SW Row Street, Inland Hwy Suite 140<br/>                 Beaverton, OR 97008<br/>                 (503) 641-3478 FAX: (503) 644-8034<br/>                 email: skelly@grf.com</p>                | <p><b>Traffic Engineer:</b><br/>                 Group Methods, Inc.<br/>                 Contact: Steve Heston<br/>                 6060 SW Heston St.<br/>                 P.O. Box 607019<br/>                 Portland, OR 97239<br/>                 (503) 294-0222 FAX: (503) 294-0223<br/>                 email: sheston@groupmethods.com</p>       |
| <p><b>Architect:</b><br/>                 Alan MacLeod Design Associates, Inc.<br/>                 1305 NW 15th<br/>                 Portland, OR 97209<br/>                 (503) 225-9161</p>   |   |



STONELEAF  
 COVER SHEET/MASTER PLAN

STONELEAF LLC  
 CAMAS, WA



SCALE: AS SHOWN  
 DATE: 09/29/04  
 DRAWN BY: WJG  
 CHECKED BY: WJG

WESTERN PLANNING ASSOCIATES INC.  
 Land Planning  
 Landscape Architecture  
 Civil Engineering



LANDERHOLM, MEMOVICH, LANSVERK & WHITESIDES, P.S.  
ATTORNEYS AT LAW

805 Broadway, Suite 1000  
P.O. Box 1086  
Vancouver, WA 98666-1086

www.landerholm.com

Vancouver (360) 696-3312  
Portland (503) 283-3303  
Facsimile (360) 696-2122  
Email [randy.printz@landerholm.com](mailto:randy.printz@landerholm.com)

Randall B. Printz

April 18, 2006

Monte Brachmann  
Public Works Director  
City of Camas  
P.O. Box 1055  
Camas, WA 98607


Re: Stoneleaf

Dear Monte:

The City has established a drainage fee for storm water management and mitigation. The City applies that fee in a specific geographic area identified in the Fisher Basin Stormwater and Wetlands Master Plan (Master Plan). The Stoneleaf project is within the geographic area identified in the Master Plan. The owners and building permit applicants for the Stoneleaf project object to the fee and believe that the fee is unlawful as applied to the Stoneleaf project.

Discussions with Staff are underway on this issue; and upon additional analysis, the issue of whether the fee is applicable to the Stoneleaf project will be brought before the City Council for decision.

The City agrees that any collection of the drainage fee prior to the Council rendering a decision on this issue shall be held in escrow by the City and any objections to the lawfulness of the drainage fee being imposed upon the Stoneleaf project shall be preserved. Similarly, no statute of limitations on any claim that the drainage fee is unlawful shall begin to run against the Stoneleaf owners or Stoneleaf building permit applicants, who have paid the drainage fee, until such time as the City Council renders their decision on this issue.

  
\_\_\_\_\_  
Randall B. Printz  
Attorney for Stoneleaf


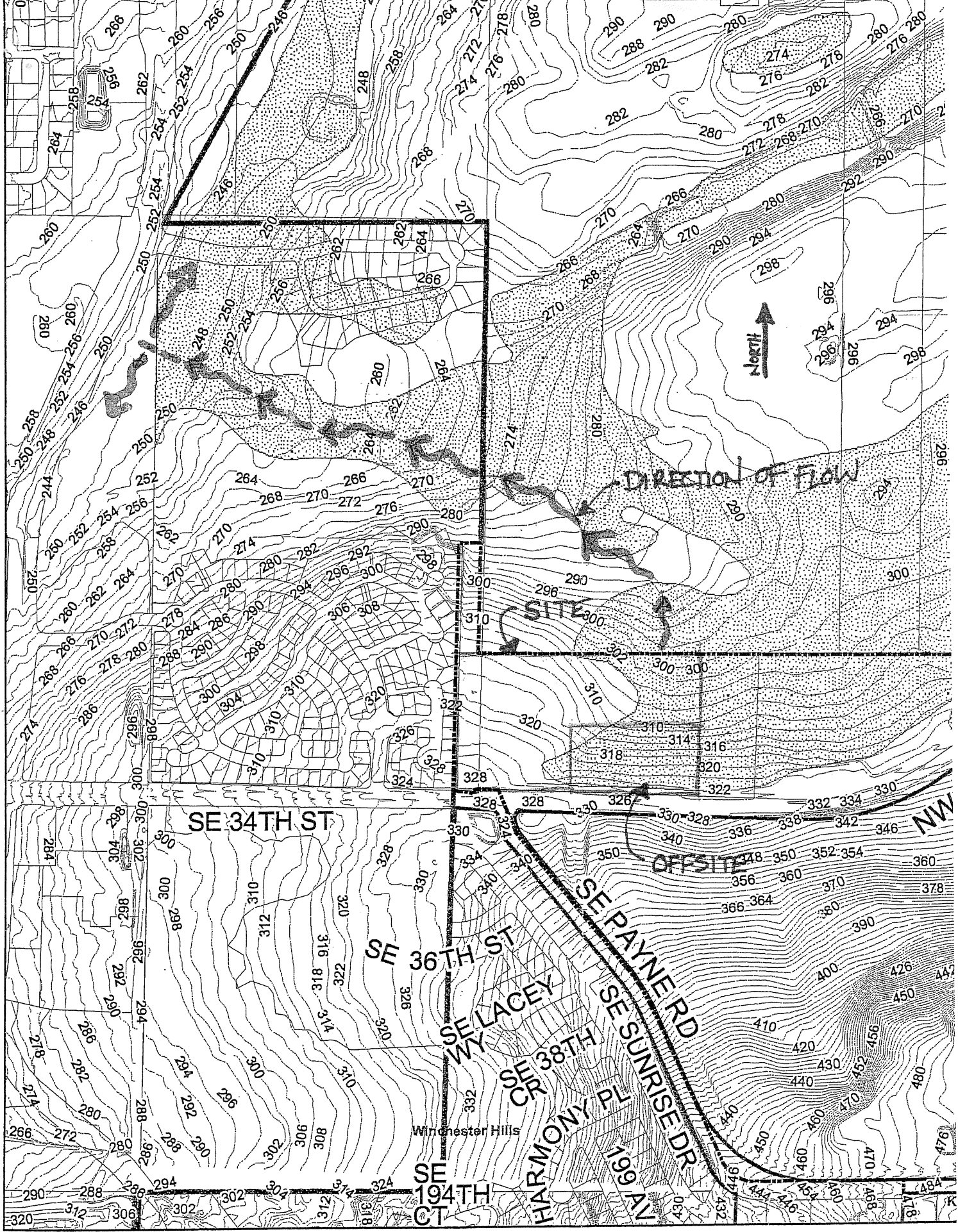
  
\_\_\_\_\_  
Monte Brachmann  
City of Camas  
Public Works Director

EXHIBIT B

## Section D – Downstream Analysis

### General

The project discharges to a wetland at the northeast corner of the site at pre-developed rates. The drainage path  $\frac{1}{4}$  mile downstream and beyond is undeveloped and unnamed wetlands in the Fisher Basin. The area  $\frac{1}{4}$  mile downstream is known as the "Fisher Swale".



DOWNSTREAM ANALYSIS 1"=500'

ROGER D. KNAPP  
SHAWN R. MACPHERSON\*  
DAVID H. SCHULTZ

KNAPP, O'DELL & MACPHERSON  
ATTORNEYS AT LAW  
430 N.E. EVERETT STREET  
CAMAS, WASHINGTON 98607

TELEPHONE  
(360) 834-4611  
FAX  
(360) 834-2608

\*ALSO ADMITTED TO OREGON BAR

HUGH A. KNAPP  
RETIRED  
ROBERT W. O'DELL  
(1924 - 1998)

## CONFIDENTIAL and ATTORNEY/CLIENT PRIVILEGED

### MEMORANDUM

**TO:** Council and Mayor

**FROM:** Roger Knapp

**DATE:** July 26, 2006

**RE:** Storm Water Development Charges

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Randy Printz' letter of July 19, 2006 raises several issues concerning the storm water development charges (SWDC) imposed by CMC Chapter 13.88. On behalf of his client, Stoneleaf Development, he advances two arguments why Stoneleaf should not be assessed SWDC's. First, he argues that the SWDC should not be imposed when storm water generated from the development does not drain into the City of Camas storm water system; and secondly, he argues that the SWDC is duplicative and cannot be collected when the developer installs onsite treatment facilities. The following are my recommendations:

1. The Stoneleaf Development. I think that the SWDC for the Stoneleaf Development should be refunded on the basis that the storm water generated by Stoneleaf flows into the Fisher Swale rather than into the City of Camas system. I further recommend that CMC 13.88 be amended to provide an exemption for property shown to discharge storm water into an area other than the City's storm water system.
2. Duplicative Charges. Mr. Printz analyzes the SWDC's in terms of an impact fee under RCW 82.02.020. I believe he is mischaracterizing the SWDC when he calls it an impact fee. It is in fact intended as a system development charge adopted under the authority of RCW 35.92.025. Part of the confusion may be attributable to the fact we collect the charge at the time of subdivision approval rather than connection to the water and sewer systems.

RCW 35.92.025, which is the statutory authority for system development charges, allows cities to collect a fee (a system development charge) for connection to the

**CONFIDENTIAL and ATTORNEY / CLIENT PRIVILEGED**

city's water and sewerage systems so that properties bear their equitable share of the cost of the water and sewer systems. Sewerage systems are defined by RCW 35.67.010 to include storm and surface water drainage systems and facilities for the treatment and disposal of storm water and surface water.

I recommend that CMC 13.88 be amended to reflect the statutory authority for the charges being RCW 35.92.025. I further recommend that the ordinance be amended to provide for collection of the SWDC at the time of connection to the City water system. This will require revising the charge from its current formula based on per acreage charges to a single family residential charge, a multi-family residential charge, and a formula for calculating the charges for commercial, light industrial, and industrial properties. Public Works Director Brachmann advises me that this can be done with relative ease.

Lastly, I suggest that we submit Mr. Printz' contention that the charge is duplicative when onsite facilities are constructed to WCIA for an opinion. They will be ultimately responsible for defending us if we are challenged in court on this charge.

3. Water and Sanitary Sewer Development Charges. In looking at the storm water development charge issues I had occasion to revisit both the water system development charge and sanitary sewer system development charge. Both of those ordinances reference that the charge is based upon the historical cost of the respective systems. Several years ago we modified the charges to include a component for the cost of future improvements to the system. I would recommend that both ordinances be revised to reflect that the charge is no longer based solely on the historical cost of the systems.

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RDK