TOWN OF RUSTON

ORDINANCE NO. 1155

AN ORDINANCE OF THE TOWN OF RUSTON VACATING A PORTION OF BENNETT STREET

WHEREAS, a petition for vacation of a portion of Bennett Street between 52n Street and 53rd Street (legally described hereinafter) was filed with the Town of Ruston, the owners of nearly 90% of the abutting property; and

WHEREAS, the vacation is being pursued in conjunction with the development of adjacent Town-owned property by Ruston Landing Group LLC ("Petitioner"); and

WHEREAS, THE Town Council held a public hearing on the vacation of said street ROW on September 8, 2004, and notice of such hearing was given as required by law; and

WHEREAS, following the public hearing, the Town Council has found that the public use, benefit, and welfare will be best served by the vacation of said public right-of-way and that the vacation meets the requirements of state law and specifically, RCW Chapter 35.70;

NOW, THEREFORE, the Town Council of the Town of Ruston, WA, do ordain as follows:

Section 1. Street Vacation – That portion of Bennett Street between North 52nd Street and North 53rd Street located in the Town of Ruston, County of Pierce, State of Washington and legally described below, is hereby vacated.

That portion of Bennett Street lying south of North 53rd Street in the Town of Ruston, Pierce County, Washington; and north of North 52nd Street in the Town of Ruston, Pierce County, Washington and east of Lots 1 through 14, Block 1, of Howard Heights 2nd Addition, as per plat recorded in Volume 7 of plats, page 53, records of Pierce County Auditor.

Section 2. Existing and Future Utility Access – An easement is hereby retained for utility purposes over those portions of the vacated right-of-way where utility providers require access or operation, maintenance, and expansion of existing utility improvements. Any utilities within the vacated right-of-way must be preserved and protected by the property owner. Utilities may be moved at the property owner's expense with approval by the utility.

Section 3. Costs – The petitioners shall pay the Town's out of pocket costs for this street vacation prior to this ordinance becoming effective.

Section 4. Compensation – The petitioners shall realign Bennett Street onto adjoining property and improve such property for park and open space purposes, all as approved by the Town in conjunction with the Master Plan Development zone site plan approval. The street vacation must necessarily be effective before the relocation and park improvement work can be completed. Therefore, to secure this obligation, the petitioner shall deposit \$250,000 in escrow under the terms of an escrow agreement satisfactory with the Mayor and Town Attorney before this ordinance is recorded and becomes effective.

Section 5. Recording – Upon approval of the escrow agreement and deposit of the funds described above in Section 4 of this ordinance, a certified copy of this Ordinance shall be recorded by the Town Clerk in the office of the Pierce County Auditor.

Section 6. Severability – Should any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state of federal law or regulation, such decision of preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 7. Effective Date – Upon receipt of payment in accordance with Section 3 and compensation in accordance with Sections 4 and 5, this Ordinance shall be published in the official newspaper of the Town and shall take effect and be in full force and effect.

PASSED THE COUNCIL AND APPROVED BY THE MAYOR this 20th day of

September, 2004.

Mayor Kim B. Wheeler

Town Clerk

TOWN OF RUSTON NOTICE OF FINAL DECISION

RUSTON LANDING PROPOSAL

RECEIVED

SEP 2 0 2004

DEVELOPMENT PLAN APPROVAL

HUITT-ZOLLARS SEATTLE

Issued pursuant to Ruston Municipal Code 19.02, Thursday September 9, 2004

BACKGROUND:

(1) Applicant; Ruston Landing Group LLC

(2) Date of the application;

July 13, 2004

(3) Notice of Counter Complete application issued; July 23, 2004

(4) SEPA MDNS issued; July 28, 2004

(5) The location of the project; Site of the former Ruston School bounded by Shirley and Bennett Streets and North 52nd and 53rd streets.

(6) Project description;

- Construct a six-story condominium building over basement parking consisting of sixty units not to
 exceed 70 feet in height measured from the alley. Approximately 120 parking stalls will be provided.
 Onsite amenities will include two roof top terraces with sky lounge and library, exercise room,
 business center and game room.
- Bennett Street, abutting the site to the east, will be vacated between N. 52nd St and N. 53rd St and realigned onto the Onsite Containment Facility(OCF) east of its present location. The realignment will provide access to additional park and open space areas for the public as well as provide approximately 65 parking spaces. (A petition for vacation has been submitted and is under consideration as a separate application.)
- The existing School Building will be remodeled for use as the future Town Hall. A community center and leased commercial spaces will also be included in the existing school building.
- A new Fire and Public Services Building will be constructed on the corner of North 52nd Street and Shirley Street.

Prepared By Carl Stixrood, Town Planner

Approved by Kim Wheeler, Mayor 🗸

(6) Requested approvals,

The current request is for approval of a Development Plan within an existing Master Planned Development zone. Future required approvals include utility connection approvals and building permits. Studies provided (available at Town Hall) include Geotechnical Investigation, Site Survey, and Traffic Study.

(7) Actions;

The Ruston Town Council took action to approve the master development plan submitted by the Ruston Landing Group by passing the following motion at its September 8, 2004 closed record meeting.

Approve the master development plan submitted by Ruston Landing Group for all four aspects of the proposal subject to the conditions outlined in the Summary and Conclusions section of the August 17, 2004 staff report.

The mayor is further authorized to prepare a notice of final decision that incorporates the August 17, 2004 staff report findings, recommendations and conditions, as well as the conclusions presented in the two memos from the Town Planner dated September 3, 2004 and September 7, 2004.

Record

This matter came to the council for a closed record hearing following an open record hearing by the Planning Commission. The written record considered by the council is comprised of: (1) a large notebook submitted by the Applicant and made up of various application documents and City documents; (2) Dan Wombacher's memorandum as Planning Commission Chair concerning the August 23rd and August 30th proceedings; (3) the Huitt-Zollars memorandum dated September 3rd, 2004; (4) the Huitt-Zollars memorandum dated September 7th, 2004; (5) the letter from Jane Hunt, Brad Huson and Ron Miller received by the City Clerk on September 2nd, 2004; and (6) the letter from William T. Lynn dated September 2, 2004 concerning the appearance of fairness doctrine.

Planning Commission

The Planning Commission's recommendation was expressed in the Wombacher memorandum and the Hunt/Miller/Huson letter. The Council was able to review the position of the Planning Commission although the recommendation was not in the form of a motion. The Council did not remand to the Commission for further action, indicating they felt the record was sufficient to make a decision. The letter from Hunt/Miller/Huson raised questions after the record was closed that were addressed by the Huitt-Zollars memos dated September 3rd and September 7th. The Council motion includes the position expressed in the Huitt-Zollars memos as an acceptable response to the questions posed in their letter.

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The requirements of the State Environmental Policy Act have been met. After review of the Environmental Checklist and related studies, the City issued a mitigated determination of non-significance on July 28th, 2004. No critical comments were received in response to the MDNS and the MDNS was not appealed. This represents an unchallenged finding that the project will not have significant adverse environmental impacts.

(A) A STATEMENT OF THE APPLICABLE CRITERIA AND STANDARDS IN THIS TITLE AND OTHER APPLICABLE LAW;

The Staff Report, as entered into this record, accurately describes and identifies the applicable criteria and standards. The report, as noted on pages 5 through 17, and the Huitt-Zollars memos of September 3 and September 7 is incorporated by reference as though fully set forth.

(B) A STATEMENT OF THE FACTS THAT SHOWS THE APPLICATION DOES OR DOES NOT COMPLY WITH EACH APPLICABLE APPROVAL CRITERION AND STANDARDS;

General

- 1. The zoning on the property is now and has been since 1998 "Master Planned Development" or "MPD".
- 2. The Comprehensive Plan map designates the property as "Town of Ruston-Planned Development". The only Comprehensive Plan provisions that address planned developments is under the heading "Master Plan Development" (MPD). Accordingly, the Town's focus in analyzing Comprehensive Plan consistency is on the Master Planned Development section of the Comprehensive Plan.
- 3. In the case of any conflict between the zoning and the Comprehensive Plan, the zoning prevails. Some have argued that the Comprehensive Plan policies regarding property designated "Residential" should apply. As noted above, the Council finds that the primary policies that apply are those in the MPD section. The Council has, however, reviewed all of the policies of the Comprehensive Plan and finds the project to be in substantial conformance with the plan.

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- 4. In analyzing the relationship between the project and the surrounding neighborhood and in reviewing the consistency of the project with the Comprehensive Plan, the Town must examine the site and the proposal in context. This includes the context of the physical location of the property which is on the boundary between a residential area and the MPD area regulated by the Asarco redevelopment plan. The ASARCO site will be developed with a mixed use project that is more intense than the uses to the west of the subject property. The character of the area surrounding the subject property is established by both the ASARCO large redevelopment project including the associated open space/containment facility and the residential development to the west.
- 5. The context for the review of the project must also take into account the uses that exist on the subject property now and historically. Those uses include the prior school use, and current ASARCO offices and municipal uses including the police station and the public meeting spaces. The current use of the eastern portion of the site is a staging area/contractor's yard for Asarco remediation activities. These current uses create impacts to the surrounding area. It presently is not a residential site and is already serving as a mixed-use development site. The site includes a school building of much larger scale than the surrounding residences to the west.
- 6. Finally, the context requires the Council to consider the uses that are permitted outright in the MPD zone. The Town has previously made a determination that this site should be zoned MPD and that decision is incorporated in all Town planning documents. The uses allowed in the MPD zone are broad and include residential, commercial and industrial. This represents a determination by the Town that this area is not an exclusively residential one, but rather is one where much more intense uses can be permitted. The Town Plan recognizes increased development pressures and the MPD is in response to that (Section 3.2 of the Plan). The uses that are proposed by the subject application here are actually at the low end of the intensity spectrum in comparison to other uses that would be permitted in the MPD. For example, commercial uses could generate significantly more traffic, involve more light and glare, and still necessitate large buildings. Industrial uses could involve noise, glare, traffic, and hours of operation conflicts with surrounding areas. The proposal is viewed as a transition between single family uses to the west and more intense uses to the east allowed under the approved development plan for the ASARCO property.
- 7. In applying the MPD zoning on the property, the Town made a determination that the development would not be subject to specific regulations on height, density, setbacks, open space and other aspects of development.



Instead, the Town elected to view a specific development plan for the property so that it could set appropriate limitations on these elements in consideration of a specific design and a specific proposal for use. This is in keeping with the Town's Vision Statement that states, among other things, "zoning requirements and approval processes for development are to be flexible enough to accommodate changing development interests and public priorities (Section 1.1 Town Comprehensive Plan). Again, the establishment of the MPD zone represents a prior decision by the Town that this property would likely not be used in the same manner as the residential properties to the west.

- 8. Comprehensive Plan goals regarding Master Planned Development emphasize maximizing development of the property to assure a strong tax base and to provide employment and "residential space" (Section 3.6 of the Plan). Maximizing development can be accomplished by either developing taller buildings or by allowing buildings that cover more of the site. In this case, views from surrounding properties to the west would be blocked by any building of two stories or more. A six-story building does not block important views appreciably more than would a two-story building. In this case, an alternative development plan that covered more of the site with shorter buildings would actually block the views from virtually all surrounding properties. By contrast, the taller building proposed by the applicant leaves view corridors on the north and south ends of the property that better protect views, leave more open areas and help reduce the scale of the proposal from the perspective of some adjoining properties.
- 9. With respect to housing in general, it is noted in Plan goals that housing as part of a development plan within the Master Planned Development should be encouraged to take advantage of views and proximity to water (Section 4.3 of the Plan).
- 10. The Master Planned Development element of the Town Comprehensive Plan (section 3.6) provides direction as to what is intended from a land use standpoint for properties zoned MPD. Mixed use development is recognized as an important part of the community. It specifically states that "Master Planned/Mixed-Use developments involve a mix of commercial, residential, retail and possibility light manufacturing uses", subject to compatibility review. It further states that future developments in the MPD should be maximized in order to provide employment, residential space and a strong tax base. The proposal by the applicant meets

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these objectives by incorporating four parts of a mixed use development, including commercial, residential, and public service uses.

Specific elements of the proposal are examined below:

RUSTON SCHOOL RENOVATION

Development Plan Approval for RUSTON SCHOOL RENOVATION - Findings of Fact

- A. Based on the plans submitted in the application, the Council finds that the development proposed is in substantial harmony with the Comprehensive Plan and can be coordinated with existing and planned development of surrounding areas, and will produce a living and working environment and landscape quality to benefit the Town and the public. The site is shown in the Comprehensive Plan as Master Planned Development with the school remaining and renovations occurring. Proposed uses are similar to existing uses so the proposal is not expected to produce a substantial change in the relationship between the renovated school building and surrounding area. Renovated parking for the building is separated from residential areas by streets. Perimeter and interior landscaping is proposed. The unique landscape and architectural character of the front of the school building is maintained. The Town Hall/office/community center uses will generate pedestrian and vehicle traffic; however these uses are essential for the community to function and are best located on a site where most Town residents can walk to them.
- B. Streets are suitable and adequate to serve the proposed uses and the anticipated traffic that will be generated thereby. No new streets are proposed. The applicant has submitted a traffic report that shows that level of service A or B will be maintained after project completion. The Town has adopted level of service D for its arterials in section 5.3 of the Comprehensive Plan. The renovation of the school building is not expected to change traffic volumes substantially since proposed uses are similar to existing ASARCO office uses at the school site. Adequate off-street parking will be provided and will be coordinated with the remainder of the mixed-use development occurring on the site and surrounding properties by provisions in the code for community parking facilities.
- C. See previous statement regarding SEPA compliance.
- D. The Council further finds that the development will be appropriate in area, location and overall planning to the purpose intended, and that such development will be in harmony with the character of the surrounding areas. The School Building under its current use (office, police and storage) has been a harmonious part of the character of this portion of the Town and will continue to be so after its renovation for use as Town Hall. As previously noted, renovations of the existing building is contemplated and encouraged in the Town Comprehensive Plan.

Conclusions and recommendations for Ruston School Renovation

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The proposed renovation of the Ruston School Building is not a substantial change in intensity of use over what presently exists. Council takes note of improvements to the adjacent parking lots with landscaping, surfacing and new striping which will substantially improve the appearance of the School site. Conditions of approval are recommended and set forth in Section D below.

NEW FIRE AND PUBLIC WORKS SERVICES BUILDING

Development Plan Approval for Police, Fire and Public Works Services Building - Findings of Fact

- A. Based on the plans submitted in the application, the Council finds that the development proposed is in substantial harmony with the Comprehensive Plan, and can be coordinated with existing and planned development of surrounding areas, and will produce a living and working environment and landscape quality to benefit the Town and the public. The proposed uses are similar in many respects to existing uses related to the existing ASARCO contractor storage and equipment yard so the proposal is not expected to produce a substantial change in the relationship between the site and surrounding area. The Fire and Public Works Services Building will generate routine public works traffic and emergency vehicle traffic. However these uses are essential for the community to function and are best located on a site that is centralized in the service area and provides rapid response times. The building is low profile and view impacts are minimized.
- B. The existing streets are suitable and adequate to serve the proposed uses and the anticipated traffic which will be generated. Vehicles entering and leaving the services building will primarily use 52nd street, Shirley Street, and Winnifred Street.
- C. See previous statement regarding SEPA compliance.
- D. The Council further finds that the development will be appropriate in area, location and overall planning to the purpose intended, and that such development will be in harmony with the character of the surrounding areas. The location of the proposed Fire and Public Works Services Building will be designed to be compatible and functional for the use intended. The location may create some minor impacts on adjacent property, but the proposed functions need to be located near Town Hall for greatest efficiency.

Conclusions and recommendations for Police, Fire and Public Works Services Building

The proposed construction of a new Fire and Public Works Services Building on the site of the Town Hall will increase efficiency and effectiveness of Town services and is in the immediate public interest.

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PROPOSED PARK IMPROVEMENTS

Development Plan Approval for OCF Park Improvements - Findings of Fact

- A. Based on the plans submitted in the application, the Council finds that the development proposed is in substantial harmony with the Comprehensive Plan and can be coordinated with existing and planned development of surrounding areas, and will produce a living and working environment and landscape quality to benefit the Town and the public, assuming an enhanced pedestrian connection is strengthened between the school building and OCF park. The OCF site is shown in the Comprehensive Plan as park use, which is consistent with the proposal. To be more consistent with adopted plans for the site, the Council desires that walks north and south of the proposed condominium building should be carefully designed to encourage pedestrian usage, and provided with handrails and possibly lighting to create an inviting public pedestrian spine that continues directly to the proposed parking along relocated Bennett Street. This will also serve to link park parking with Town Hall during peak use (meeting) times.
- B. Streets are suitable and adequate to serve the proposed park uses. The conclusions reached in the traffic report indicate that Comprehensive Plan levels of service will not be exceeded.
- C. See previous statement regarding SEPA compliance.
- D. The Council further finds that such development for the OCF park will be in harmony with the character of the surrounding area as depicted in the ASARCO Master Plan.

Conclusions and recommendations for approval for OCF Park Improvements

The proposed construction of park improvements on the site of the OCF will implement the goal for establishing a park on the OCF. The Council is concerned that a long-term concept be developed with ASARCO for the balance of the OCF that identifies with the original concept. Conditions of approval will mitigate this concern and are set forth in Section D below.

NEW CONDOMINIUM BUILDING

Development Plan Approval for New Condominium Building(s) - Findings of Fact

A. Based on the plans submitted in the application, the Council finds that the development proposed is in substantial harmony with the Comprehensive Plan and can be coordinated with existing and planned development of surrounding areas, and will produce a living and working environment and landscape quality to benefit the Town and the public. The location of the condominium structure at the edge of a large future public open space will mitigate the height proposed given the overall context as explained in earlier sections of this decision. As indicated in the applicant's SEPA checklist, and concurred in by staff and this Council, blockage of water views (over what could occur under residential development) will not

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- be substantially increased with the extra height requested. The proposal will not have a substantial affect on the ability of adjacent property owners to develop or use their property.
- B. Streets are suitable and adequate to serve the proposed uses. The Town accepted the applicant's traffic report which indicates that the project will meet Town level of service standards.
- C. See previous statement regarding SEPA compliance.
- D. The Council further finds that such development will constitute a residential environment of sustained desirability and stability, that it will be in harmony with the character of the surrounding area, and that the sites proposed for public facilities, such as playgrounds and parks are adequate to serve the anticipated population. The architectural quality of the structure proposed by the applicant will provide an upscale residential environment that will be an asset to the community and a showcase for future residential development on the ASARCO properties.

Conclusions and recommendations for New Condominium Facility

The proposed construction of new Condominium Buildings east of the existing school building will create some view blockage but will result in greatly improved financial and public service conditions for the Town. General property values in the vicinity of the proposal may increase as a result of this project. The Council is approving this element of the development in the context of location at the edge of a large undeveloped area planned for mixed-use development (ASARCO) and in keeping with the purpose and intent of the MPD zone.

(C) THE REASONS FOR A CONCLUSION TO APPROVE OR DENY;

It is the conclusion of the Council that the proposal is consistent with Town ordinances, adopted plans and applicable regulations. The Council takes note of the fact that the site is zoned MPD which is a considerably different type of zoning classification than the abutting Residential zone to the west. The MPD zone promotes a mixed use environment of residential, commercial and industry. The Council concurs with the town planner that previous Commissions and Town Councils intended for the school site to be developed in a unique and innovative manner for the betterment of the Town. The current application is consistent with this intent as expressed in adopted documents.

The Council is mindful that the Comprehensive Plan provides broad land use policy direction and the proposal must be found generally consistent with the Comprehensive Plan. The zoning code governs the specifics of land use and typically provides site-specific guidance for height, setbacks and lot coverage but in the MPD zone, these aspects of a development are established through adoption of a specific "Development Plan". This allows the Council necessary discretion and flexibility in determining development standards in an MPD zone.

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- The Council is persuaded that obstruction of view corridors has been shown by the applicant to be a
 minimum increase over what would occur if the property were developed under residential zoning.
 Views down the 52nd and 53rd Streets will be maintained.
- The Council is mindful that a 60 unit building might not be typically considered "small scale" however the applicant has incorporated several architectural design measures to break the building down into smaller visual elements which enhance compatibility with adjacent residential areas. The height is greater than allowed on adjacent properties to the west but the architectural style of the building emphasizes individual dwelling units rather than a large building block.
- Finally, the site has a history of mixed use in a residential area. The current use of the site is for offices and contractor storage yard; prior use was for a school.

Council member Don Senecal specifically pointed out that the proposal is consistent with several of the Goals of the Washington State Growth Management Act (GMA) provided to guide local governments in preparing comprehensive Plans. These goals are stated and incorporated in the Town Comprehensive Plan and Councilmember Senecal specifically pointed to project consistency with Goal 1. Urban Growth; Goal 2. Reduce Sprawl; Goal 4. Housing; Goal 5. Economic Development; and Goal 9. Open Space and Recreation. The text of these goals are set forth in section 1.4 of the Comprehensive Plan. In summary, the Town Plan seeks to balance these GMA Goals, including, among other things, emphasizing "economic development to provide a long-term tax base for the Town."

(D) ANY CONDITIONS OF APPROVAL NECESSARY TO ENSURE THE PROPOSED DEVELOPMENT WILL COMPLY WITH APPLICABLE CRITERIA AND STANDARDS;

The proposal by the Ruston Land Group is hereby approved, subject to the following conditions and the site plan submitted with the application shall be the development regulation under which future use and improvement of the site would be governed.

- Parking proposed in the park east of the proposal site will be for public use and the joint use of school renovation/Town Hall and park users. A covenant to this effect will be required.
- 2. Landscaping as proposed in site plan A1.01 will be provided.
- A revised plan for the OCF Park showing how adopted concepts will be revised to fit proposed pedestrian circulation patterns must be provided prior to issuance of a building permit.
- 4. Plans providing construction level details of proposed pedestrian spines located north and south of the proposed condominium building between the school building and east edge of the proposed parking lot along the relocated Bennett street must be provided with the building permit application.

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- 5. A plan for modification of adopted plans for the OCF Park will be provided prior to issuance of a building permit (see Park and Open section of the Comprehensive Plan and the Site Plan in the ordinance adopting the ASARCO Master Development Plan). No change to the applicant's commitments for construction of park improvements is proposed. The plan must show how adopted concepts may be revised to fit proposed pedestrian circulation patterns. It is noted that a concept plan in response to this concern was provided at the hearing.
- Property owners to the North must be provided plans for pedestrian and vehicular access to their property prior to final approval of Bennett Street Vacation between the north edge of the condominium parcel and North 53rd street.
- 7. The following conditions identified during environmental review are incorporated as conditions that must be met prior to issuance of a building permit.
 - A) Correspondence indicating sewer availability from Tacoma and permission to connect to their interceptor sewer.
 - B) Correspondence from Tacoma sewer utility indicating that proposed improvements will allow adequate access to their facilities for maintenance and operations.
 - C) Design approval from Ruston Electric Utility for upgrades required to serve the proposal.
 - D) Correspondence indicating water availability from Tacoma Water Department.
 - E) Correspondence from all other utility providers currently located in Bennett Street indicating that the proposed design of improvements will allow acceptable access for maintenance and operations.
 - F) An erosion control plan meeting the requirements of the Department of Ecology Manual.
 - G) Documentation that the new public works facility is designed to allow operation under current Best Management Practices for prevention of storm water pollution.
 - H) Documentation from ASARCO that the relocated Bennett Street right of way will be available for public street purposes.
 - Documentation that parking at a rate of 2 spaces per unit is provided on site.
 - J) A sidewalk plan demonstrating that existing walks are continued through the site and provide links to existing and proposed structures.
 - K) A circulation plan demonstrating that road access to existing properties is maintained.
 - L) Correspondence from each of the following Town of Ruston departments indicating that physical improvements meet all Town requirements.
 - 1). Police

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- 2). Fire
- 3). Public Works (Storm water, sidewalks, new streets, curb cuts, solid waste collection)
- 4). Parks
- M) A detailed landscape plan for the condominium site and relocated Bennett Street (park) shall be submitted for review and approval at the time of building permit application.
- N) Design guidelines for the proposal shall be developed by the applicant for review and approval of the Town Council. Guidelines should address façade articulations, color schemes, landscaping and rooftop features.

This notice shall be sent to the applicant and to all parties of record.

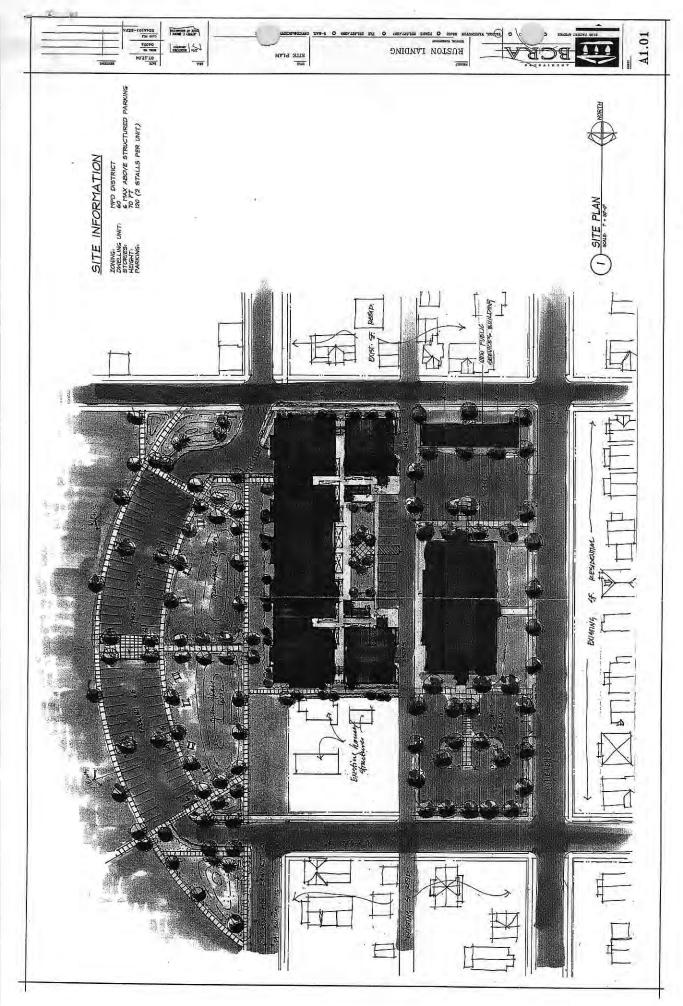
Date

Signed

Kim Wheeler, Mayor

Attest

Karen Murphy, Town Clerk/Treasurer



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