

210799

Velikanje Moore & Shore, P.S.

attorneys at law

VMS

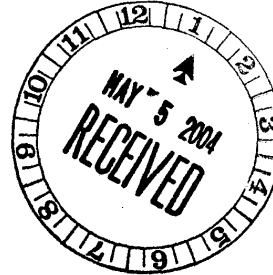
John S. Moore
Morris G. Shore
George F. Velikanje
Alan D. Campbell
James C. Carmody
Carter L. Fjeld

J. Jay Carroll
Mark E. Fickes
Douglas L. Federspiel
Brendan V. Monahan
Kevan T. Montoya
Nancy L. Livingston

Metiner G. Kimel
Travis W. Misdeldt
Garon K. Jones
James S. Elliott
Sarah L. Wixson

April 30, 2004

Vernon A. Williams
SURFACE TRANSPORTATION BOARD
Washington D.C. 20423-0001



Re: Kershaw Sunnyside Ranches

Dear Mr. Williams:

Enclosed are the original and ten copies of the following:

1. Reply to Joint Protest and Comments; and
2. Declaration of Sarah Wixson in Support of Reply

Very truly yours,

VELIKANJE, MOORE & SHORE, P.S.

Evva Lange, secretary for
Sarah L. Wixson

/36490.el
enclosure

cc: Gregory S. Lighty w/one enc.
Raymond L. Paoletta w/one enc.
Paul D. Edmondson w/one enc.
Charles Montange w/one enc.
Jeanne C. Cushman w/one enc.
Mark C. Laughlin w/one enc.

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SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600

CERTIFICATE OF MAILING



The undersigned certifies as follows:

I am an employee of VELIKANJE, MOORE & SHORE, P.S. and SARAH L. WIXSON is the attorney for Kershaw Sunnyside Ranches in the above entitled case; I am a citizen of the United States, a resident of Yakima County, Washington, over the age of 21 years, and not a party to said action. I further certify that on the 30th day of April, 2004, I mailed by first class mail, postage prepaid, an original and ten true and correct copies of Reply to Joint Protest and Comments and Declaration of Sarah Wixson in Support of Reply to:

Vernon A. Williams
Surface Transportation Board
Washington, D.C. 20423-0001

I further certify that on the 30th day of April, 2004, I mailed by first class mail, postage prepaid, a true and correct copy of Reply to Joint Protest and Comments and Declaration of Sarah Wixson in Support of Reply to the following:

Gregory S. Lighty
Halverson & Applegate, P.S.
311 N. 4th Street
Yakima WA 98901

Charles Montange
426 N.W. 162nd Street
Seattle, WA 98177

Raymond L. Paoella
City Attorney
200 South Third Street
Yakima, WA 98901-2830

Jeanne C. Cushman
Attorney General of Washington
P.O. Box 40113
Olympia, WA 98504-0113

Paul D. Edmondson
Attorney at Law
P.O. Box 384
313 North Third Street
Yakima, WA 98901

Mark C. Laughlin
Fraser, Stryker, Meusey, Olson,
Boyer & Bloch, P.C.
500 Energy Plaza, 409 South 17th
Street
Omaha NB 68102-2663

CERTIFICATE OF MAILING - 1
26401-01

I certify that the foregoing is true and correct.

DATED this 30th day of April, 2004, at Yakima, Washington.


EVVA K. LANGE

SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600

**YAKIMA INTERURBAN LINES ASSOCIATION - ADVERSE ABANDONMENT
in YAKIMA COUNTY, WASHINGTON**

REPLY TO JOINT PROTEST AND COMMENTS

DISCUSSION

1. Kershaw has properly sought abandonment of the line.

Kershaw has properly sought abandonment of that section of line which crosses its property. The federal statutes provide that a railroad may seek abandonment approval. See 49 U.S.C. § 10903. However, there is no express provision allowing for an individual with a reversionary interest in the property subject to the railroad's right-of-way to seek abandonment of the lines. Nonetheless, an individual may seek an adverse abandonment, but generally must follow the rules and regulations required of a rail carrier.

A railroad may "abandon any part of its railroad lines," 49 U.S.C. § 10903(d)(1). Thus, Kershaw has sought only to abandon that portion of the line that

crosses its property. Yakima County may seek to abandon the remainder of the line if it chooses.

2. The plan to rehabilitation the Naches Line is neither economically feasible nor practicable.

When assessing whether the public convenience and necessity permit abandonment, the Board focuses a finding of public convenience or necessity involves balancing competing interests: "[t]he benefits to particular communities and commerce of continued operation must be weighed against the burden thereby imposed upon other commerce." Colorado v. United States, 271 U.S. 153, 168, 46 S.Ct. 452, 456, 70 L.Ed. 878, 885 (1926). E.g., State of Texas v. United States, 642 F.2d 87, 90 (5th Cir.1981); State of Nebraska v. United States, 255 F.Supp. 718, 721 (D.Neb.1966). "The [Board's] role in abandonment proceedings is to balance the immediate and local interests of the community and the shippers against the broader public interest in freeing interstate commerce from undue burdens." State of Texas v. United States, 642 F.2d 87, 90 (5th Cir.1981).

Generally, the Board denies an adverse abandonment application if there is potential for future operation on the line and the carrier has taken reasonable steps to attract traffic. Consolidated Rail Corp. v. I.C.C., 29 F.3d 706, 711 (D.C.Cir. 1994) (citing Order, 8 I.C.C.2d at 783). In determining whether a proposed plan shows potential for future operation the Board looks to whether the plan is economically

feasible and practicable. Id. at 711 (citations omitted). In this case, Yakima County's plan for future operation is neither economically feasible nor practicable.

First, Yakima County's acquisition of the line is conditioned upon obtaining a release of approximately \$750,000 worth of liens. The Washington Department of Transportation has stated that "[s]ubject to appropriation from the Legislature and mutually agreeable contractual arrangements" it could provide an "estimated \$200,000 in financial assistance . . . to clear the public and private liens." (Declaration of Stephen Anderson, p. 1). The Washington Department of Transportation, which holds the largest lien on the property, has not committed to release its lien. Notably, the State was offered the Naches line in exchange for a release of lien; it refused. (Declaration of Robert Kershaw, Ex. C, p. 19).

Second, the Washington Department of Transportation estimated that "subject to appropriation and mutually agreeable contractual arrangements", it could provide an "estimated \$300,000 to complete rehabilitation of the Naches Branch." (Declaration of Stephen Anderson, p. 1). The amount of money hoped to be appropriated falls far short of that required to rehabilitate the line. An extensive study on the costs to rehabilitate the line was prepared for the Washington State Transportation Department in April 2001. At that time the estimate to rehabilitate the line was approximately \$2 million dollars. (Declaration of Robert Kershaw, Ex. F, 00012). In the three years since the study was completed, no improvements or

maintenance has occurred on the line. It is difficult to imagine that the line now requires \$1.7 million dollars less rehabilitation than it did in 2001 or that the 2001 study could have been \$1.7 million dollars off in its rehabilitation estimate.

Although the Rail Commenters envision that sufficient funds will be available from the Washington Department of Transportation and other unknown third parties, no funds have actually been promised or acquired, from any source, to date. (Joint Protest, p. 5)

Third, there are two shippers who have expressed an interest in restoring traffic on the rail line. However, the fact that two businesses would like to ship by rail, is only half of the equation. Effective shipment requires both a shipper and a receiver. There is no evidence that there are any buyers who are ready and able to receive shipments by rail. The estimated business revenue of this line is marginal at best. The shippers' contention that traffic on the rail line will increase once their businesses grow is speculative and also unsupported by any evidence. Speculation that additional traffic might materialize in the future is not sufficient to support a claim of potential future utility of the line. Moreover, failure of the line to carry any traffic for almost a decade supports the argument that there is no call for continued rail service. See Borough of Columbia v. Surface Transp. Bd., 342 F.3d 222 (3rd Cir. 2003).

The County and local governments have grappled with the issue of what to do with the Naches Line for years and have not been able to come up with a workable

plan. The current rehabilitation plan is wildly contingent and wholly under-funded. Yakima County's plan for future operation of the Naches Line is little more than theoretical. With no way to implement the plan, it is not economically feasible or practicable.

3. If the County, or any other entity, wants to restore rail service, it should acquire the line through an offer of financial assistance.

If the goal of the Yakima County and the other Rail Commenters is to restore rail service, then offers of financial assistance should be accepted on the line. The OFA provisions of the statute guarantee any "financially responsible" party the right to acquire a rail line to provide for continued rail service. 49 U.S.C. § 10904. Under § 10904(c), a prospective OFA purchaser "may offer to subsidize or purchase the railroad line that is subject of" an abandonment application.

A party must file its OFA within ten days of a decision from the Board granting a petition for abandonment or exemption. 49 U.S.C. § 10904(c); 49 C.F.R. § 1152.27(c)(1)(i)(B). After a prospective purchaser has "offered financial assistance regarding that part of the railroad line to be abandoned or over which rail transportation is to be discontinued," 49 U.S.C. § 10904(d)(1) obligates the Board to decide if the prospective purchaser is "financially responsible." Under 49 U.S.C. § 10907(a). If a party files a timely OFA, and the Board finds that the party is "financially responsible," then the Board must postpone the abandonment of the line. 49 U.S.C. § 10904(d)(2).

A governmental body such as Yakima County is presumed to be financially responsible. 49 U.S.C. § 10907(a). Therefore, the question will not be whether Yakima County is a financially responsible party opposing abandonment, but whether the County can provide continued service. Consolidated Rail Corp. v. I.C.C., 29 F.3d 706, 712 (D.C.Cir. 1994).

The aim of an offer of financial assistance under section 10905 is not simply the maintenance of rail lines, but the continuation of rail service. The Interstate Commerce Commission, the Board's predecessor, has held that "[t]hose situations in which a purchaser of rail properties has no affirmative plans for continuation or resumption of service, but merely holds out the possibility of continuation or resumption of service at some unspecified future time, are not properly to be considered offers of financial assistance and do not fall within the scope of 49 U.S.C. 10905." Borough of Columbia v. Surface Transp. Bd., 342 F.3d 222, 241(3rd Cir. 2003) (citing Abandonment of R.R. Lines & Discontinuance of Service, Ex Parte No. 274 (Sub-No. 6), 365 I.C.C. 249, 260 (I.C.C.1981)).

Yakima County and other Rail Commenters seek both restored rail service under a modified certificate of public convenience and necessity, 49 C.F.R. § 1150.21 and interim trail use under the Rails to Trail Act. However, the protesters have no current plans for rail service nor do they plan to establish a trail. Rather, they seek to cobble the two statutory schemes together in order to hold on the rail line in the hopes

that someday there will be enough money to rehabilitate the line and that then some third party carrier will agree to operate it.

Yakima County does not want the line to go through an offer of financial assistance because neither the County nor any of the other Rail Commenters can do anything more at this time than hope for the possibility of continuation or resumption of service at some unspecified time in the future. There are no current funds to rehabilitate the line, no third party carrier, and no immediate plans for resumption of rail service.

If continued rail service is truly the goal, then offers of financial assistance should be accepted. If a sale under the OFA procedures does not occur, the trail use and public use processes may then proceed.

4. Yakima County has no intention to establish a trail under the National Trails Act.

Yakima County has no intention to establish a trail under the National Trails Act, rather, as stated in its Joint Protest, once the County acquires the line pursuant to a certificate of interim trail use the "County plans to negotiate an operating agreement with an appropriate operator." (Joint Protest, p.7). The County should receive a certificate of interim trail use only if it proposes to satisfy the purposes of the Trails Act, set forth at 16 U.S.C. § 1241 (2000).

The purpose of the Trails Act is to preserve rail corridors for possible reactivation of rail service by permitting and encouraging their interim use as

recreational trails. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B). Under the Act, third parties apply to the Board to use the right-of-way for temporary recreational trail use and rail banking. As part of this application, the third party agrees to accept financial responsibility, including any taxes, legal liability and management costs, for the right-of-way. By accepting such responsibility, the third party prevents an official "abandonment" of the right-of-way that would result in the interest reverting to the property owner and allows the Surface Transportation to maintain jurisdiction for potential reactivation for railroad use in the future. Then the trail developer can enter into negotiations with the railroad for the purchase of the right-of-way. If an agreement is reached and if the ICC determines that "public convenience and necessity permit abandonment" then a Certificate of Interim Trail Use ("CITU") will be issued. At this point, the railroad is allowed to discontinue service and the transfer of rights can be made to the trail operator, subject to the railroad's option to reactivate rail service in the future. See Preseault v. ICC, 494 U.S. 1, 7 (1990).

Although the County has offered to assume responsibility for management, payment of taxes, and legal liability for the right-of-way and agrees to return the right-of-way should there ever be a proposal to reactivate the line for rail service, it

has not stated any intention to actually operate a trail. See 16 U.S.C. § 1247(d) (2000).¹

Essentially, the County proposes to continue to hold the line in limbo until such time as they have the resources to implement a plan. The status quo, under which the line has been out of service and in disrepair for seven years, does nothing serve the public convenience or necessity.

If the Board does issue of CITU to the County, Kershaw would ask that the Board establish terms and conditions requiring that the area actually be converted to trail use within a reasonable period of time. Kershaw is willing to allow its easement to be relocated to the perimeter of its property, adjacent to the highway, to facilitate the implementation of a trail. The cost difference between building a trail on the existing line and a trail in a new location should be minimal.²

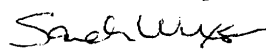
¹ By contrast the Town of Naches has dreams of establishing a rail with trail along the line. (Declaration of Sarah Wixson in Support of Reply, Ex. A). However, other than receiving a grant to draw up plans, the Town of Naches has not taken any steps to acquire property or funding for its implementation. Most notably, the Town of Naches has no plan to obtain additional property adjacent to the existing easement so as to simultaneously facilitate a railroad and a trail.

² The costs of relocating or establishing new easements for public utilities would not be prohibitive. Kershaw maintains that there is no water main on rail easement on its property. The County has provided no evidence to the contrary. The only known "utility" along the line is a fiber optic cable.

CONCLUSION

Kershaw is seeking to abandon that section of the Naches Line which crosses its property so that it can be put to a useful purpose. The County and other Rail Commenters have hopes, dreams and wishes, but no feasible plan to either put the line back into service or to establish a trail for recreational purposes. Rather, they seek to hold onto the line until the day that they can come up with a plan and the financial backing to implement that plan. Kershaw respectfully requests that the Board authorize abandonment of the line.

Respectfully submitted,


Sarah Wixson

VELIKANJE, MOORE & SHORE, P.S.
405 East Lincoln Avenue
P.O. Box 22550
Yakima, WA 98901

509/248-603
Fax: 509/453-6880

for Kershaw Sunnyside Ranches

SURFACE TRANSPORTATION BOARD

Adverse Abandonment Proceeding

AB Docket No. 600

**YAKIMA INTERURBAN LINES ASSOCIATION - ADVERSE ABANDONMENT
in YAKIMA COUNTY, WASHINGTON**

DECLARATION OF SARAH WIXSON IN SUPPORT OF REPLY

1. I am the an attorney with the firm of Velikanje, Moore and Shore, P.S., counsel for Kershaw. I make this declaration based on knowledge of facts to which I am competent to testify and would testify at hearing.
2. Attached hereto as Exhibit A is a true and correct copy of the response I received from the public information request directed to the Town of Naches.

I, Sarah Wixson declare under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration. Executed on this 30th day of April, 2004.

Sarah Wixson
Sarah Wixson

State of Washington))ss.
County of Yakima)

Sarah Wixson, makes oath and says that she is the counsel for Kershaw Sunnyside Ranches, Inc. applicant herein; that she has been authorized by the

DECLARATION OF SARAH WIXSON
IN SUPPORT OF REPLY - 1

applicant to verify and file with the Surface Transportation Board the foregoing declaration in STB-AB 600; that she has carefully examined all the statements in the declaration as well as the exhibit attached thereto and made a part thereof; that she has knowledge of the facts and matter relied upon in the declaration and that all representations set forth therein are true and correct to the best of her knowledge, information, and belief.

Sarah Wixson

Sarah Wixson

SUBSCRIBED AND SWORN to before me this 30th day of April, 2004.

Evva K. Lange

Print Name: EVVA K. LANGE

NOTARY PUBLIC in and for the
State of Washington, residing at

Yakima. My appointment
expires: 6-01-07



LAW OFFICES OF
HALVERSON APPLGATE P.S.
311 NORTH FOURTH STREET
P.O. BOX 22730
YAKIMA, WASHINGTON
98907-2715

TELEPHONE:
509-575-6611

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hapa@halversonlaw.com

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509-457-2419



ATTORNEYS AT LAW

Lawyers for
Central Washington

GREGORY S. LIGHTY
EMAIL: GLIGHTY@HALVERSONLAW.COM

March 15, 2004

Sarah Wixson
Velikanje, Moore & Shore, P.S.
405 E. Lincoln
Yakima, WA 98901

Re: Kershaw Sunnyside Ranches matter
Public Records Request

Dear Sarah:

In response to your Public Records Act request for records from the Town of Naches, the attached documents are provided. Specific responses to your requests are as follows:

1. Any grant application or draft application for the "Federal Byways Program".

The Town of Naches is putting together a grant application, but the application, or a draft thereof, has not yet been created.

2. Any documentation indicating the sources where matching funds, if any, are to be acquired.

The Town of Naches is not aware of any such documentation.

3. Any documentation indicating how the approximate \$750,000 of liens currently existing on the Naches line are to be satisfied.

The Town of Naches does not have any information regarding the liens currently existing on the Naches line.

Ms. Sarah Wixson
March 15, 2004
Page 2

4. Any documentation, including but not limited to proposals, applications, and meeting minutes, regarding an expansion of Town of Naches' Urban Growth Boundaries.

See attached Ordinance No. 592 and the Town of Naches Planning Commission Regular Meeting Minutes for June 2, 2003 (approved at the Town of Naches Planning Commission meeting on September 2, 2003) and the Town of Naches Planning Commission Regular Meeting Minutes from September 2, 2003 (approved at the Town of Naches Planning Commission meeting on October 6, 2003). See also the Town of Naches Council Meeting from November 10, 2003.

5. Any documentation from any industry of business with a commercial interest in the line.

The Town of Naches does not have the requested information.

6. Any documentation regarding the commercial feasibility of Naches line.

The Town of Naches does not have the requested information.

7. Any documentation indicating a plan or proposal to condemn additional property adjacent to the existing rail way easement for the purpose of a "rail with trail" project.

The Town of Naches does not have the requested documentation.

8. Any documentation regarding projections or budgets to develop the Naches Depot and Trail project to completion.

At this point, there are no such projections or budgets.

9. Any other documentation pertaining to the development of the Naches line.

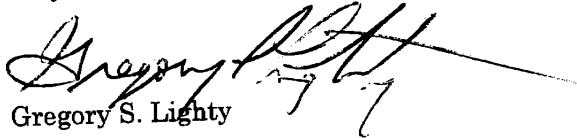
The Town of Naches does not have the requested documentation.

I also forwarded your recent correspondence suggesting a meeting between the parties to Jeff Ranger, the Naches Town Administrator. Mr. Ranger was out of town last week but I expect a response shortly.

Ms. Sarah Wixson
March 15, 2004
Page 3

In the meantime, if you have any questions or concerns, please feel free to give me a call.

Very truly yours,


Gregory S. Lighty

Attachments

cc: Jeff Ranger

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3/15/2004 10:08 amks

ORDINANCE NO. 592

AN ORDINANCE OF THE TOWN OF NACHES, WASHINGTON, ADOPTING CHANGES TO THE URBAN GROWTH BOUNDARIES, PERTAINING TO THE FUTURE GROWTH BOUNDARIES OF THE TOWN OF NACHES, WASHINGTON.

WHEREAS, The Town of Naches, within the provisions of the Growth Management Act in RCW 36.70A, periodically updates its growth management area; and

WHEREAS, the Naches Planning Commission, at their regular meeting on October 6, 2003, held a Public Hearing to receive public comment regarding changes to the Town of Naches' growth management area; and

WHEREAS, the Naches Town Council, after consideration of the Planning Commission's written findings and recommendations, approved the changes to the Town's growth management area;

NOW, THEREFORE

The Town Council of the Town of Naches, Washington, does ordain as follows:

Section 1. Statement of Purpose: The Naches Planning Commission, in accordance with the provisions of the Growth Management Act, has studied and made recommendations for change to the boundaries of the growth management area. Those changes and recommendations were presented to the Naches Town Council, which by virtue of this Ordinance, approves and adopts said changes to the boundaries of the growth management area.

Section 2. Adoption of Growth Management Map: The map labeled as "UGA Expansion map 4, Town of Naches, Future Land Use Map" which is attached to this Ordinance as Exhibit "A" and fully incorporated herein by reference, is adopted as the future land use map for the Town of Naches, changing the boundaries of the growth management area for said Town. These changes shall be submitted to the county authorities, as provided by law, for consideration by the County at the next regularly scheduled session wherein boundaries for growth management areas are considered.

Section 3. Revocation of Previous Maps and Designations: Previous maps and designations of land in the growth management area inconsistent with Exhibit "A" is hereby repealed effective immediately after Yakima County takes appropriate action to adopt the changes provided for herein.

Section 4. Severability: If any provision of this Ordinance or its application to any person or circumstances is held to be invalid, the remainder of this Ordinance or the application of the provisions to the other persons or circumstances, shall not be affected.

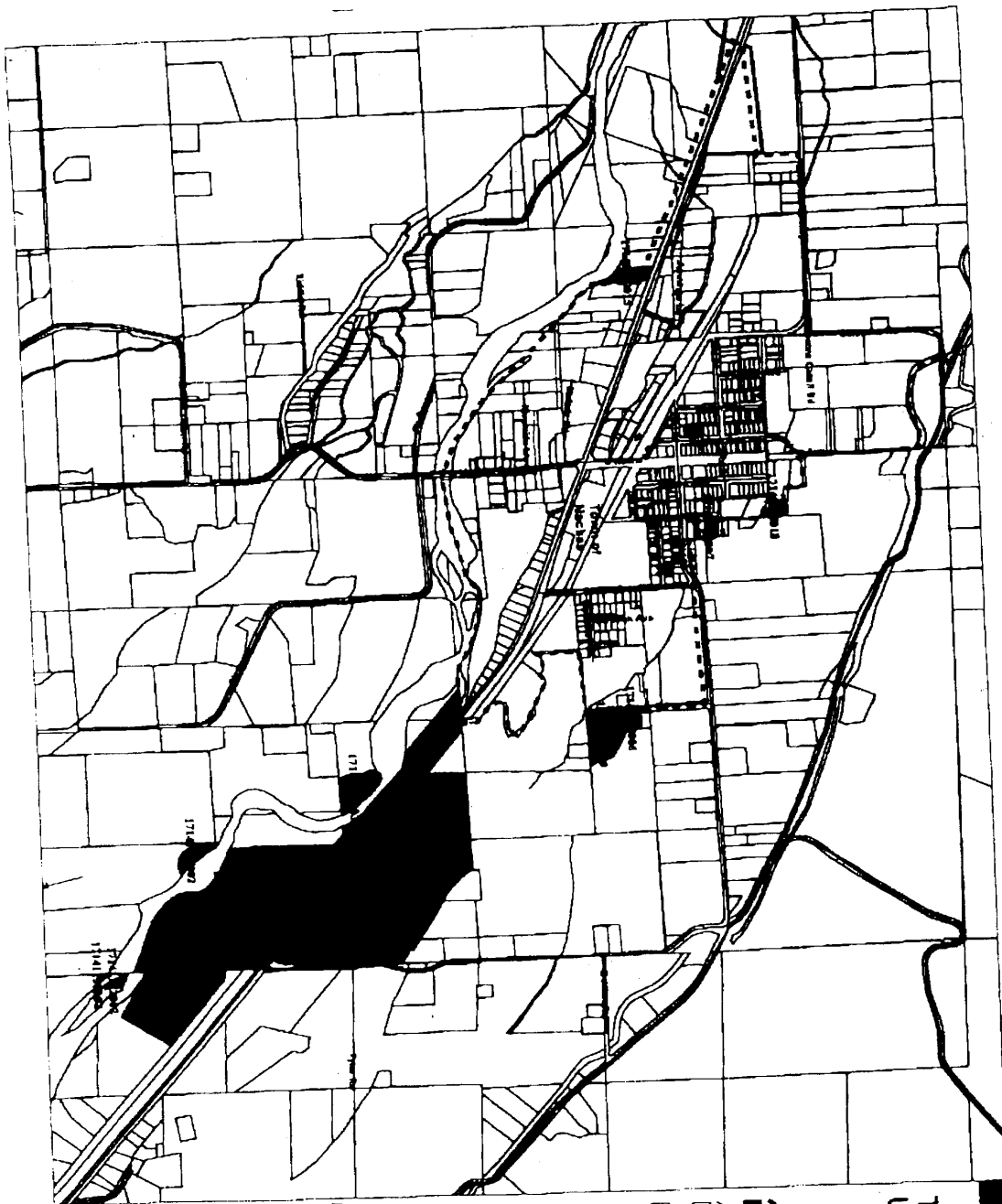
**PASSED BY THE TOWN COUNCIL OF THE TOWN OF NACHES,
WASHINGTON this 10th day of November 2003.**


Charles R. Ross, Mayor


Linda B. Mead, Clerk/Treasurer


Gregory S Lightly, Town Attorney

TOWN OF NACHES



Town of Naches UGA Expansion

ASSOCIATING INFORMATION SERVICES

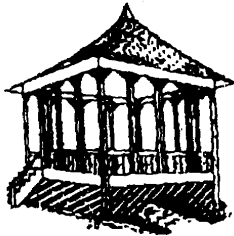
- Urban Growth Boundary
- Unincorporated Area
- All Roads
- Fee Road
- Other

Parcel lot lines are for visual display only. Do not use for legal purposes.



Copyright © 2004, Planning Council
The map is a technical drawing and is not a legal document. The
Owner is responsible for the accuracy of the information.
The map is not a legal document and is not a substitute for a
survey or other legal document.

Page 04 of 04



TOWN OF NACHES

29 E SECOND STREET

P O BOX 95

NACHES, WASHINGTON 98937-0095

**TOWN OF NACHES
PLANNING COMMISSION MEETING 7:00 P.M.
COUNCIL CHAMBERS
TUESDAY SEPTEMBER 2, 2003**

AGENDA

1. **CALL TO ORDER**
 - a. Call meeting to order
2. **APPROVE MINUTES**
 - a. Approve minutes of 6/2/03
3. **PUBLIC HEARING**
 - a. None
4. **NEW BUSINESS**
 - a. Update on UGB
 - b. Preliminary Conditional Use (Old Forest Service Building)
 - c. Expansion of UGB along Railroad Right of Way
5. **OLD BUSINESS**
 - a. none
6. **OTHER BUSINESS**
7. **ADJOURNMENT**

"The Mission of the Town of Naches is to serve our residents in a courteous and professional manner, and to provide essential public services effectively and efficiently to ensure the health and safety of our citizens."

Responsible Customer Service ♦ Reliability ♦ Honesty

**TOWN OF NACHES
PLANNING COMMISSION
REGULAR MEETING MINUTES
JUNE 2, 2003**

The meeting was called to order at 7:00 p.m. by Chairman Nick Sloan.

ROLL CALL

Present: Chairman Nick Sloan and Commissioners Ted Silvestri, Earl Fisk, Rebecca Patrick, and Kit Hawver

Also Present: Administrator Jeff Ranger and Town Planner Bill Hordan

APPROVAL OF MINUTES

Commissioner Silvestri moved, seconded by Commissioner Patrick to approve as written the minutes of 5/05/03. Motion carried unanimously.

PUBLIC HEARING

Chairman Sloan opened the Public Hearing at 7:05 p.m. with the purpose of the Public Hearing to receive comments regarding a proposed change in the Urban Growth Boundary (UGB) for the Town of Naches.

Chairman Sloan requested Town Planner Bill Hordan explain a map that showed the town limits and current zoning with the proposed Urban Growth Boundaries.

Gale Grow, 9050 Old Naches Highway, questioned the relationship between being in the urban growth boundary and annexation. Mr. Grow asked if there is a possibility being annexed if he didn't desire to be annexed. After being told that it is a possibility, Mr. Grow requested not to be included in the Urban Growth Boundary.

Bill Sedge, 8961 Old Naches Highway, still had concerns about agricultural burn and use and at this time did not want to be included in the Urban Growth Boundary.

John Diener, 9200 Old Naches Highway, questioned the continued use of land for agriculture and livestock and zoning issues. Mr. Diener was undecided about being included in the Urban Growth Boundary.

Ted Schmelzer, 10208 Old Naches Highway, explained the benefit of being in the UGB and felt the landowners did not understand the benefits of being in the Urban Growth Boundary.

Kelli Mansfield, 9080 Old Naches Highway, inquired about burn permits in the Urban Growth Boundary and that changes from Yakima Clean Authority could happen.

There being no further comments the Public Hearing was closed at 7:32 p.m.

NEW BUSINESS

General Annexation Process

Mr. Hordan informed the Planning Commission of the annexation process and three scenarios adopted by Legislation. Election method, property owner method and the fifty fifty method. Mr. Hordan explained that staff was still in the interpretive mode.

Administrator Ranger said he would provide the latest annexation material from AWC to the Planning Commission.

OLD BUSINESS

Proposed Urban Growth Boundary

Chairman Sloan asked the Planning Commission members to discuss and deliberate the information presented in the public hearing.

Commissioner Silvestri stated that he believed the Finney property needed to be included in the UGB. Mr. Silvestri also stated that the UGB should extend to Allan road because this property would bring commercial value to Naches.

Administrator Ranger stated that the Finney's had been contacted in previous months and at that time they indicated they did not want to be included.

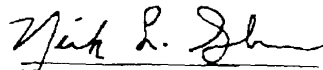
Chairman Sloan asked Administrator Ranger to contact Finney's and see if they have changed their minds and would be interested in being included in the UGB.

Rezone Request Status

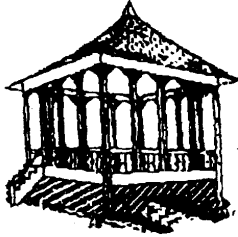
Commission Hawver questioned the status of the Paul Ashley request for a zoning change.

Planner Hordan informed the Commission that a process had to occur for submittal of this request in the same package with the UGB requests.

Commissioner Hawver moved, seconded by Commissioner Patrick to adjourn the meeting at 8:20 p.m. Motion carried unanimously.


Nick Sloan Chairman


Linda B. Mead, Clerk



TOWN OF NACHES

29 E SECOND STREET

P O BOX 95

NACHES, WASHINGTON 98937-0095

**TOWN OF NACHES
PLANNING COMMISSION MEETING 7:00 P.M.
COUNCIL CHAMBERS
MONDAY OCTOBER 6, 2003**

AGENDA

1. **CALL TO ORDER**
 - a. Call meeting to order
2. **APPROVE MINUTES**
 - a. Approve minutes of 9/2/03
3. **PUBLIC HEARING**
 - a. Conditional Use (Old Forest Service Building) for a church
 - b. UGB Requests for Inclusion
4. **NEW BUSINESS**

none
5. **OLD BUSINESS**

none
6. **OTHER BUSINESS**
7. **ADJOURNMENT**

"The Mission of the Town of Naches is to serve our residents in a courteous and professional manner, and to provide essential public services effectively and efficiently to ensure the health and safety of our citizens."

Customer Service ▲ Reliability ▲ Honesty

**TOWN OF NACHES
PLANNING COMMISSION
REGULAR MEETING MINUTES
SEPTEMBER 2, 2003**

The meeting was called to order at 7:00 p.m. by Chairman Nick Sloan.

ROLL CALL

Present: Chairman Nick Sloan and Commissioners Ted Silvestri, Earl Fisk,
Rebecca Patrick, and Kit Hawver
Also Present: Clerk Linda Mead and Town Planner Bill Hordan

APPROVAL OF MINUTES

Commissioner Patrick moved, seconded by Commissioner Fisk to approve as written the minutes of 6/02/03. Motion carried unanimously.

NEW BUSINESS

Update on UGB

Mr. Hordan informed the Planning Commission of the Town Council has approved the consideration of amendments to the Town of Naches Comprehensive Plan to take place during the month of September rather than march as stated in the Comprehensive Plan due to the results of meetings with Yakima County during the County-wide Planning Policy process. Mr. Hordan further explained that the Town has now advertised for applications for requests of proposed Comprehensive Plan Amendments.

Preliminary Conditional Use (Old Forest Service Building)

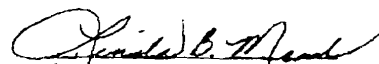
Mr. Hordan informed the Commission that a Conditional Use Request has been received by the Town to allow a church in the Old Forest Service Building located at 10061 US Hwy 12. Mr. Hordan also informed the Commission that the Public Hearing will probably be scheduled for the October 6 Planning Commission meeting.

Expansion of UGB Along Railroad Right-of-Way

Mr. Hordan reported that Administrator Ranger is researching the potential to include the Railroad Right-of-Way into the Town's UGB.

Commissioner Patrick moved, seconded by Commissioner Silvestri to adjourn the meeting at 7:20 p.m. Motion carried unanimously.


Nick Sloan Chairman


Linda B. Mead, Clerk

**TOWN OF NACHES COUNCIL MINUTES
NOVEMBER 10, 2003**

The meeting was called to order at 7:09 p.m. by Mayor Charles Ross.

ROLL CALL

Present: Mayor Charles Ross, Councilmembers Janet Anderson, Steve Davidson, Chuck Harris, Eric Wolfe, and Rhonda Schab
Also Present: Administrator Jeff Ranger, Town Attorney Greg Lighty and Clerk Linda Mead

Mayor Ross led the Pledge of Allegiance and welcomed the audience.

APPROVE AGENDA

Councilman Wolfe moved, seconded by Councilman Schab to approve the Agenda as presented with the addition of Agenda Item 9.e. Approve 2004 YCOG Budget. Motion carried unanimously.

CONSENT AGENDA

Councilman Anderson moved, seconded by Councilman Davidson to approve the Consent Agenda:

- a. Approve minutes of 10/13/03 Study Session
- b. Approve minutes of 10/13/03 Regular Council Meeting
- c. Approve Claim Warrants #9173 through #9211 in the total amount of \$33,308.78, dated through November 10, 2003
- d. Approve Payroll Warrants #3196 through #3213 in the total amount of \$20,712.72, dated through October 31, 2003 and void #3196 (no dollar value) and #3201 in the amount of \$3,927.75 (re-issue for Warrant #3194 lost)
- e. Adopt Resolution #369, approving a Conditional Use Permit for Terry Ingle to establish a church in the General Business Zone (GB) at 10061 US Highway 12, Naches, Washington.

Motion carried unanimously

PUBLIC HEARING

Preliminary 2004 Budget Including Revenues

The Public Hearing was opened at 7:12 p.m. by Mayor Charles Ross, with the purpose of the Hearing to received comments regarding the Preliminary 2004 Budget including revenues.

Clerk Mead informed the public that the Preliminary 2004 Budget presented includes a proposed 5% rate increase in both water and sewer. The proposed increase has been recommended by Ted Pooler, Engineer with Huibregtse, Louman. The increase will be much less than the estimated 11% increase that was anticipated two years ago, and is necessary to accomplish the Town's long-range plan to end deficit spending and provide for debt payments and reserve financing.

Clerk Mead also informed the public that the Preliminary Budget include the allowed 1% increase in property taxes to meet the financial needs of the Town. A 1% increase will be an additional \$797.88 in property taxes to the Town.

Preliminary 2004 Budget Including Revenues Continued

Clerk Mead reported that the expenditures included a 2½% salary increase for Public Works and the Clerk and a 3½% increase for the Administrator, an additional appropriation for a Bobcat with some additional accessories for use at the WWTP, Water and Streets.

There being no comments from the public, the Hearing was closed at 7:19 p.m. by Mayor Ross.

Proposed 2003 Budget Amendment

The Public Hearing was opened at 7:19 p.m. by Mayor Ross, with the purpose of the Hearing to receive comments regarding the Proposed 2003 Budget Amendment.

Clerk Mead informed the public that the 2003 Budget Amendment included the \$18,000 received from PacifiCorp for the Ditch Bank, the proceeds and disbursements for the sale of the houses donated by PacifiCorp, increasing benefits in all funds because of the increased cost of medical benefits in 2003.

There being no comments from the public, the Hearing was closed at 7:21 p.m. by Mayor Ross.

UNFINISHED BUSINESS**S. Naches Road Project**

Adm. Ranger informed Council that the Biological Assessment was still being prepared and it is anticipated that construction will begin in June, 2004.

Water Improvements Projects

Adm. Ranger reported that the Well #3 Equipment project will begin in December and that the physical inventory for the Cross Connection project has been completed.

Naches Depot & Trail Project

Adm. Ranger informed Council that the Grant Deadline for completion of the planning for the Naches Depot & Trail Project is December, 31, 2003, and the Engineer and Architect will make the deadline with construction drawings available in January.

Wastewater Treatment Plant Project Close-Out

Adm. Ranger reported that the close-out process is progressing for the WWTP Project, and the final close-out report and reimbursement request has been submitted to Public Works Trust Fund.

Approve Yakima Valley Conference of Governments (YCOG) 2004 Budget

Councilman Anderson moved, seconded by Councilman Harris to approve the 2004 YCOG Budget and agreed to continue our participation. Motion carried unanimously.

Don Skone, Executive Director of YCOG, thanked the Council for their support and participation.

NEW BUSINESS**Liquor License Renewal: Van's Tavern**

Council reviewed the Liquor License Application for Van's Tavern and no objections.

Correspondence: Yakima County Assessor and City of Grandview

Council reviewed a letter received from the Yakima County Assessor stating that due to Budget cuts by the County for 2004, the Assessor will not be adding New Construction to property values each year and intends to only add new construction every 6 years as they rotate re-assessments.

Council also reviewed a letter of response sent by the City of Grandview. Council requested Mayor Ross keep up to date on this issue through the Mayor's meetings held on a monthly basis.

Correspondence: Department of Labor & Industries

Clerk Mead informed Council that the Dept. of L&I has informed taxing districts that they will no longer prepare Letters of Release on Public Works Projects, and intend to put the burden of proof of contractors quarterly L&I payments on projects on the taxing districts. The taxing districts have been informed that the Attorney General's office is reviewing this matter and will make a response.

ORDINANCES**Ordinance #592**

Councilman Harris moved, seconded by Councilman Anderson to adopt Ordinance #592, adopting changes to the Urban Growth Boundaries, pertaining to the future growth boundaries of the Town of Naches, Washington. Motion carried unanimously.

Ordinance #593

Councilman Davidson moved, seconded by Councilman Schab to adopt Ordinance #593, fixing the estimated amount of Ad Valorem taxes to be levied to meet the financial requirements of the town of Naches, Washington for the year 2004. Motion carried unanimously.

Ordinance #594

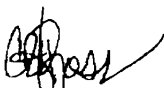
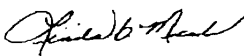
Councilman Wolfe moved, seconded by Councilman Anderson to adopt Ordinance #594, adopting changes to the Zoning Map of the Town of Naches, Washington. Motion carried unanimously.

EXECUTIVE SESSION

Mayor Ross called for an Executive Session at 7:50 p.m. with the purpose of the Session to discuss Labor Negotiations and Potential Purchase with the Session to last no longer than 10 minutes.

The regular session was called back to order at 7:55 p.m. by Mayor Ross.

Councilman Schab moved, seconded by Councilman Wolfe to adjourn the meeting at 8:05 p.m.


Charles R. Ross, Mayor
Linda B. Mead, Clerk

VELIKANJE MOORE & SHORE, P.S.
405 E. Lincoln
P.O. Box 22550
Yakima, WA 98907

Fax: 509-453-6880



FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 202-565-9004

To: Vernon A. Williams/Barbara Satler
Of:
From: Sarah Wixson
Client/Matter:
Date: May 5, 2004

DOCUMENTS	NUMBER OF PAGES* 31

COMMENTS:

Please find enclosed the following documents which were mailed by U.S. Mail on Friday, April 30, 2004 to the Surface Transportation Board in Washington, D.C. 20423-0001:

1. Reply to Joint Protest and Comments;
2. Declaration of Sarah Wixson in Support of Reply;
3. Cover letter dated April 30, 2004 directed to Vernon A. Williams; and
4. Certificate of Mailing

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