

The City Council will consider a proposed settlement agreement between Royal Yakima Development and the City of Yakima at a public meeting on Tuesday, January 28, 2003 at 9:00 a.m. in the Council Chambers at Yakima City Hall, 129 North 2nd Street, Yakima, Washington. If after reviewing the proposed settlement agreement, you wish to provide comments on, or suggested revisions to the language in the agreement, please submit them by Friday, January 24, to the City Manager's Office at Yakima City Hall.

SETTLEMENT AGREEMENT

This Agreement is by and between Royal Yakima Development, L.L.C., a Washington limited liability company, and George Cameron and Janin Cameron, husband and wife (collectively referred to hereinafter as "Royal Yakima"), and the City of Yakima, Washington, a Washington municipal corporation (the "City"). In consideration of the mutual covenants and obligations set forth herein, the parties agree:

1. Recitals.

1.1. Royal Yakima is the applicant for permits from the City for development of a sports bar, full-service restaurant and enhanced card room on real property commonly known as 3807 River Road, Yakima, Washington (Parcel No. 181315-12041) (the "Project"). The application was deemed complete by the City on January 24, 2002, and the City processed the project as categorically exempt from review under the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW.

1.2. The Hearing Examiner for the City conducted an open record public hearing on March 28, 2002. The City staff report presented to the Hearing Examiner recommended approval of certain permits necessary for the Project. The Hearing Examiner issued a written decision approving the Project on April 11, 2002. The Yakima City Council held a closed record appeal hearing on May 21, 2002. On June 4, 2002, the City issued a decision reversing the decision of the Hearing Examiner and denying the Project's land use applications.

1.3. On or about June 10, 2002, Royal Yakima initiated a Petition for Review of Land Use Decision and Complaint for Damages against the City in Yakima County Superior Court (the "Petition"). In the Petition, Royal Yakima sought reversal of the Yakima City Council decision of June 4, 2002, as well as money damages in an amount to be proved at time of trial for the City's alleged violation of 42 U.S.C. 1983 and RCW 64.40.020.

1.4 The City and Royal Yakima seek to resolve the claims alleged in the Petition by implementing certain additional conditions in connection with the Project in accordance with the terms and conditions of this Agreement.

2. Settlement. The City and Royal Yakima hereby agree to settle, pursuant to the terms of this Agreement, their dispute as to the Petition and the Project.

3. Additional Project Conditions. In addition to those certain conditions otherwise previously imposed during the review of the Project by the City and/or the Hearing Examiner, Royal Yakima hereby agrees to conditions on the approval of the Project's certificate of zoning review and building permit set forth on Exhibit "A" (the "Additional Conditions"). Royal Yakima agrees that the Additional Conditions may be imposed on the certificate of zoning review and/or the building permit. The Additional Conditions shall be fully enforceable as conditions of any of the Project's permits as may be provided for by the Yakima Municipal Code, or as may be enforced by state law or as otherwise provided herein. Whether or not the Additional Conditions are imposed on the certificate of zoning review and/or the building permit, Royal Yakima shall implement the Additional Conditions as a covenant of this Agreement. This Agreement, and the Additional Conditions, shall constitute a covenant running with the subject land, and may be recorded by either party in the real property records with the Yakima County Auditor.

4. Termination of Agreement. If Royal Yakima, or any of its affiliates, successors, or assigns, elects to abandon the Project, then Royal Yakima may give notice of such election to the City, and upon such notice, the Additional Conditions shall automatically terminate, and no Party shall have any further obligations under this Agreement.

5. Withdrawal of Opposition; Dismissal of Petition; Settlement. As long as Royal Yakima is performing its obligations under this Agreement, and under the Project application and related permits, the City shall not file any further appeals of the Project, nor shall the City take any other action to oppose, hinder, delay or object to the development of the Project or the implementation of the Additional Conditions. Nothing herein shall preclude the City from: (i) seeking enforcement by the City of the implementation of the Additional Conditions by Royal Yakima; (ii) seeking a determination of whether the Additional Conditions are being satisfied; (iii) seeking to enforce the City's obligations under this Agreement; or (iv) exercising any rights it may otherwise have in connection with review of any revision or modification of the Project.

Immediately after the final execution of this Agreement by the Yakima City Council, Royal Yakima will enter such pleadings with the Yakima County

Superior Court as may be necessary to dismiss the Petition with prejudice and without costs to any party.

By execution of this Agreement Royal Yakima shall hereby have settled all claims for damages of any kind, including claims for monetary damages arising out of the City's actions in any way related to the Project whether said claims are based on contract, statutory or constitutional causes of action, or any other basis.

6. Breach. Any failure by a party to perform any action required to be performed hereunder shall constitute a breach of this Agreement. In the event of such breach, any non-defaulting Party shall be entitled to pursue any and all remedies, both legal and equitable, including without limitation specific performance and/or suit for damages. All terms and provisions of this Agreement are material and not severable.

7. Agreement Not Enforceable by Third Parties. This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

8. Authority to Execute. Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity, represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the entity or Party for which he or she is signing. The parties hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein, and that this Agreement is enforceable in accordance with its terms. This Agreement shall not be binding until it is duly approved by the Yakima City Council.

9. Voluntary Execution. In executing this Agreement, the Parties acknowledge that they have consulted with their duly licensed and competent attorneys, and that they have executed this Agreement after independent investigation, voluntarily and without fraud, duress or undue influence, and they exclusively consent that this Agreement be given full force and effect according to each and every one of its express terms and provisions.

10. Notice. Any notice which any Party to this Agreement desires or may be required to make or deliver to the other shall be in writing, shall be sent by certified mail, return receipt requested or by a reputable overnight receipted delivery service, and shall be addressed as follows:

For the City:

Mr. Richard A. Zais, Jr.
City Manager
Yakima City Hall
129 N. 2d Street
Yakima, WA 98901

With a copy to:

Mr. Ray Paoletta
City Attorney
Yakima City Legal Department
200 S. 3d Street
Yakima, WA 98901

For Royal Yakima:

With a copy to:

Royal Yakima Development, L.L.C.
3700 Pacific Hwy. E #410
Tacoma, WA98424

James C. Carmody
Velikanje, Moore & Shore, P.S.
405 East Lincoln Avenue
Yakima, WA 98901

Any party may change the address and/or person serving as its agent upon adequate written notice to the other parties.

11. Interpretation. This Agreement was drafted by counsel for the parties and there shall not be a presumption or construction against any of the parties. Any titles or captions of paragraphs contained in this Agreement are for convenience and reference only. All of the terms and conditions set forth herein are binding on the parties, regardless of the section in which such terms and conditions are set forth.

12. Binding Nature of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors, devisees, assigns and all persons now or hereafter holding or having all or any part of the interest of a party to this Agreement.

13. Governing Law, Venue, and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall lie in Yakima County Superior Court. In the event of a lawsuit to enforce or interpret this agreement, the prevailing party shall be entitled to recover from the other party its attorneys fees incurred either at trial or on appeal.

14. Entire Agreement. This Agreement contains the entire understanding among the parties with respect to the subject matter hereof. Except as provided herein, there are no other representations, agreements, arrangements, or understandings, verbal or written, between and among the parties relating to the subject matter of this Agreement. No amendment or modification to this Agreement shall be valid or effective unless made in writing and executed by the City and Royal Yakima after the effective date of this Agreement.

15. Counterpart Originals. This Agreement may be executed by facsimile and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement.

Dated this _____ day of January, 2003.

(print or type name)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On this day personally appeared before me GEORGE and JANIN CAMERON, husband and wife, to me known to be the individuals who executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of each such person for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2003.

(print or type name)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me Mary Place, to me known to be the Mayor of the City of Yakima, Washington, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day
of _____, 2003.

(print or type name)

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

My Commission expires: _____

EXHIBIT A

ADDITIONAL CONDITIONS

1. A six-foot-high, view-obscuring fence, made of wood or masonry block and accompanied by landscaping vegetation complying with sitescreening "Standard C," as set forth in Ch. 15.07 et seq. of the Yakima Urban Area Zoning Ordinances, shall be erected along the southern perimeter of the parcel on which the Project is located for a distance of approximately 185 feet; at the westernmost point of said fence, the fence shall continue in a northerly direction for approximately 150 feet. Said fencing shall be continuous in length, shall be erected beyond the location of the existing parking areas, shall contain no gates or points of ingress or egress, and shall not be located upon any existing City right of way. The City shall grant any variances necessary to accommodate said fencing as provided for herein.

Attached as Exhibit A-1 is a diagram showing the location of the required fencing.

2. On-premises signage visible from the City's Chesterley Park shall be limited to one freestanding sign located in substantially the same area, and with substantially the same dimensions, as the sign and pole existing as of the date of this Agreement, near the southwest corner of the Project site. No off-premises signage shall be directed at or focused on the vicinity of the City's Chesterley Park.

3. Any expansion of the physical structure located on the Project site beyond the expansion described in the decision of the City of Yakima Hearing Examiner, UAZO CL(3) #2-02, dated April 11, 2002, shall not occur except inasmuch as the same shall be directed to the northerly portion of the premises and provided that the same shall be considered a nonconforming use if it results in the expansion or intensification of the use of the premises as a social card room, as that term is defined in applicable local zoning provisions.

4. No person under the age of twenty-one (21) shall be allowed to participate in any gambling activity licensed, permitted, or otherwise regulated by Washington state law or agency regulation conducted on the premises; provided, however, that this restriction shall not apply in the event that the interior layout (i.e., floor plan) of the facility is modified in the future such that there is an actual physical barrier separating that portion of the premises at which such gambling activities occur from the portion of the premises at which liquor service and/or consumption occurs. Royal Yakima agrees to install and prominently post restricted area boundaries and associated signage reasonably adequate to

inform all customers of the restriction described herein in this paragraph 4, and as described in the following paragraph 5.

5. No person under the age of eighteen (18) shall be allowed to enter or remain on or in the premises after the hour of 9:00 p.m.