

DOUGLAS COUNTY

Received

DEPARTMENT OF HEARING EXAMINER

SEP 27 2013

140 19th Street NW
East Wenatchee, WAS 98802-4109

Douglas County TLS

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P-13-02)	DECISION AND
Stony Hill)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 19, 2013, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is WF Limited Partnership, 440 30th St NW, East Wenatchee WA.
2. General Description: A major subdivision application for a 32 lot. Proposed lot sizes range from 13,000 square feet to 18,000 square feet. Average lot size is 14,960 square feet. The project is proposed to be served by public water and on-site septic systems.
3. Location: The subject property is located at the intersection of NW Empire Way and 32nd Ave NW. The property is further described as being located within the SW Quarter of the NW Quarter of Section 27, Township 23N, Range 20 E., W.M. in Douglas County WA. The Douglas County Assessors Parcel Number is 23202710027.
4. Site Information:

Total Project Size:	12.48 acres
No. of lots	32
Domestic Water:	East Wenatchee Water District
Sewage Disposal:	On-site septic
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #2
Telephone Service:	Frontier
5. Site Characteristics: The subject property is characterized as flat with a gentle slope to the west towards NW Fir. No structures are present on the property. The site is also a former orchard.

6. Surrounding Property: To the north, Single family homes, vacant land, orchard; to the south, Orchard, Single family homes on large lots; to the east, Single family homes; to the west, Single family homes on large lots.
7. The subject property is located within the Greater East Wenatchee Planning Area.
8. The subject property is located within the East Wenatchee Urban Growth Area.
9. The subject property is located in the R-L zoning district which allows for subdivisions as permitted uses.
10. The subject property is located outside of the Douglas County Sewer District boundary. The district boundary is immediately adjacent to the southern property line of the subject property.
11. Policy H-21 of the Greater East Wenatchee Area Comprehensive Plan requires that if the property is located outside of the service district boundary of a utility, annexation into the service district must occur prior to development of the property.
12. On March 28, 2007, Douglas County adopted Ordinance No. 07-01H which adopted portions of Title 17 of the East Wenatchee Municipal Code within the unincorporated portions of the East Wenatchee Urban Growth Area.
13. RCW 58.17.110(2) requires that appropriate and adequate provisions be made for streets or roads, alleys or other public ways.
14. The subdivision will access NW Fir Avenue. The proposal includes 5 access easements connecting to NW Fir Avenue and 1 access easement connecting to 32nd Ave. NW. The access easements will be developed to the Douglas County Road Standards for access easements. All roadway improvements would be the responsibility of the developer.
15. A Traffic Impact Study from Transportation Engineering NorthWest LLC., dated July 3, 2013 was submitted for the proposal.
16. Frontage Improvements are addressed in Chapter 12.50.150 Transportation System and Frontage Improvements, of the Douglas County Road Standards. Empire Avenue is designated as Urban Arterial. Douglas County Road Standard Figure 3-8 Urban Collector/Arterial is the applicable road standard. 32nd Street NW and NW Fir Avenue are designated as Urban Local Access Roads. Douglas County Road Standard Figure 3-7b is the applicable road standard.
17. Section 17.04.040(A), D.C.C., authorizes dedications of right-of-way and improvements to the area directly affected by the development.
18. A septic system report for Test Hole Data and Method II Determination from Tower Designs Inc, dated July 5, 2013 was submitted for the project.
19. The CDHD has determined that the area for placement for on-site sewage systems may be limited. The soils indicated by septic system designer Keith Tower shows soils ranging to be Type 1 to Type 5.

20. In order to meet the state requirements for Enhanced 911 service, all lots within this plat will be addressed prior to final plat approval.
21. Comments from reviewing agencies have been considered and addressed where appropriate.
22. Douglas County issued a Determination of Nonsignificance on August 28, 2013 pursuant to WAC 197-11-355 (Optional DNS).
23. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
24. Proper legal notice requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
25. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
26. The Eastmont School District #206 has determined that adequate school related facilities exist to accommodate increased student enrollment associated with increased residential development.
27. The applicant has provided a fire flow analysis from RH2 engineering dated April 19, 2013. The analysis identifies the necessary water system upgrades necessary to obtain fire flow for the proposal.
28. Section 17.24.150 of the Douglas County Code requires that every subdivision shall be served by a water supply system approved and installed to meet the requirements and standards of the Chelan Douglas Health District.
29. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
30. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
31. The entire Planning Staff file was admitted into the record at the public hearing.
32. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
33. An open record public hearing after due legal notice was held on September 19th, 2013.
34. Appearing and testifying on behalf of the applicant was Jon Torrence. Mr. Torrence testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. Mr. Torrence testified that all of the proposed conditions of approval were acceptable to the applicant. Mr. Torrence did request some clarifications on one of the

proposed conditions of approval. Staff clarified that proposed condition of approval number 29 was meant to require that there is a maximum of six (6) lots per access easement and that the applicant, with approval from staff and public works, could determine which particular lots were to access each easement.

35. Public testimony was received from the following individuals:

35.1. Dan Beardsley. Mr. Beardsley testified that he lives across from the subject property. He pointed out that the Douglas County Code requires that the project comply with the applicable comprehensive plan. He emphasized that in the staff report that Policy H13 of the applicable comprehensive plan does have requirements that may be appropriate as conditions of approval. He also wanted to state for the record that there is no easement for irrigation from the end of his irrigation line to the subject property. He recognized that the subject property did have shares of irrigation water but that there is no authorization to use his property to deliver the irrigation to the applicant's property.

35.2 Ron Balzer. Mr. Balzer's concerns were consistent with his comment letter on file. His primary concern was the size of the lots not being consistent with the size of lots in the subject area. He also has concerns about the absorption rates for particular lots within the subject property and presented photographs which were already part of the file of record, that he argued demonstrated that the soil absorption rates as provided by the applicant's experts were not accurate.

36. Supplemental materials were submitted by Staff at the hearing, including a September 16th, 2013 memorandum from Jennifer Lange, Douglas County Engineer to the hearing examiner and a September 19th, 2013 memorandum from Douglas County Transportation Land Services staff to the hearing examiner.
37. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
38. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
39. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
40. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Greater East Wenatchee Area Comprehensive Plan.

3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 17 Zoning of the East Wenatchee Municipal Code as adopted by Ordinance # 01-01H.
6. As conditioned, the proposal is consistent with Title 17 "Subdivision", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application P-13-02 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials of file dated July 9, 2013 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.

4. A plat certificate showing parties of interest from a title company must be submitted with the blue-line drawings.
5. The final plat map shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
6. All parties having an ownership interest in the subject property shall acknowledge the plat.
7. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
8. All improvements shall be in place prior to plat finalization or a subdivision agreement must be entered into between the applicant and the County. The subdivision agreement shall specify surety, time frames, etc. If the developer elects to enter into a subdivision improvement agreement, an appropriate financial security such as a surety bond or irrevocable standby letter of credit shall accompany said agreement in conformance with D.C.C. 14.90.
9. The following notes shall appear on the face of the plat:

9.1 Based on historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. The Washington State Department of Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the MTCA cleanup levels, the Washington State Department of Ecology recommends that potential buyers be notified of their occurrence.

9.1.1 This note shall not be required to be placed on the final plat, if the soils are sampled by a professional with adequate credentials to verify that the site does not contain lead and arsenic and organochlorine pesticides at concentrations above the MTCA cleanup levels.

9.2 The areas designated for drainfields must be protected from cover by structures or impervious surfaces, surface drainage, soil compaction, grade alteration, excavation and any other activity that may adversely affect the performance of the sewage system.

9.3 Onsite sewage systems at least Treatment Level B as described by WAC 246-272A, will likely be required for replacement or repaired septic systems.

9.4 Drainfield size reductions for use of gravelless distribution products may not be authorized for onsite sewage systems on these lots.

9.5 Soil evaluations need to be done prior to issuance of building permits.

9.6 Some lots may be limited to 2 or 3 bedroom dues to limited lot size.

10. Pursuant to Douglas County Engineers' supplemental memorandum to the Hearing Examiner dated September 19th, 2013, the following additional conditions of approval apply:
 - 10.1 Transportation improvements beginning at the intersection of NW Fir Avenue (including Empire Avenue), extending through the furthest most lot created by each phase are required to be constructed and accepted as a condition of approval for each phase. A turnaround will be required on NW Fir Avenue at the end of improvements associated with each phase. The turnaround may be temporary only if Performance Assurance; DCC Section 12.50.110 is provided to secure completion of the permanent turnaround.
 - 10.2 Stormwater improvements shall be completed prior to each phase. Facilities proposed to accommodate runoff associated with multiple phases shall be constructed to accommodate full build out at the time of initial construction. Stormwater Operation and Maintenance Agreements shall be updated to identify maintenance obligations associated with each phase. Such agreements and amendments shall be recorded prior to approval of each phase and the Auditor's file Numbers shall be referenced on the mylar.
 - 10.3 The cul-de-sac at the end of NW Fir Avenue, serving the residential neighborhood shall be constructed with the same structural section identified within Douglas County Standard Figure 3-7b. The minimum radius at face of curb shall be 45-feet.
 - 10.4 Access easements shall be designed and constructed in accordance with Douglas County Code, including Section 12.53.010, including Figures 4-1 through 4-3. Access easements serving 3 or more parcels shall be a minimum of 30 feet in width.
 - 10.5 An access permit shall be required for all new and revised accesses to a County Road per DCC 12.24. Emergency accesses shall be clearly signed as such and shall include provisions such as a gate or bollards to restrict access.
11. For the blue line drawing review an adequate building pad shall be shown for each lot outside of setbacks, easements and drainfield/reserve drainfield areas.
12. During construction, all work associated with the proposed project shall occur between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday. Construction activities on Sunday shall not commence before 8:00 a.m. and shall conclude by 7:00 p.m.
13. The final plat shall show the location of all easements serving or encumbering the subject property.
14. To facilitate efficient emergency response affecting public health and safety, an addressing plan shall be assigned by the Douglas County Geographic Information System Coordinator during blue line review of the final plat. Contact Todd Wilson at 509-884-7173 prior to blueline submittal to select appropriate road names. All of the access easements must be named.

Addresses for each lot shall be shown on the face of the final plat mylar prior to final plat approval.

15. All improvements shall be in place prior to plat finalization or a subdivision agreement must be entered into between the applicant and the County. The subdivision agreement shall specify surety, time frames, etc. If the developer elects to enter into a subdivision improvement agreement, an appropriate financial security such as a surety bond or irrevocable standby letter of credit shall accompany said agreement in conformance with D.C.C. 14.90, Performance Assurance and Guarantee. Bonding of improvements in lieu of construction shall be at the discretion of Douglas County.
16. The location of existing utilities (i.e. power, sewer, water and irrigation lines, etc.) and utility and private access road easements shall be depicted on the face of the final plat.
17. The developer shall install all utilities in accordance with the standards and specifications of the Douglas County PUD, East Wenatchee Water District, District and Douglas County Fire District #2. All utilities shall be located underground.
18. The developer shall prepare final plans for the development and installation of utilities for the approval of the respective purveyors prior to site development. Final "as-built" drawings shall be delivered to purveyors upon completion.
19. The developer shall coordinate with the Douglas County Public Utility District (PUD) to determine necessary improvements and easements that may be required in order to provide electrical service to the plat. Written verification from the Douglas County PUD that easements and improvements have been addressed to their satisfaction, shall be required prior to final plat approval.
20. Prior to final plat approval, written verification from the East Wenatchee Water District that the requirements of the District have been satisfied and certifying water availability is required.
21. Prior to final plat approval, written verification from the Wenatchee Reclamation District that the requirements of the District have been satisfied is required.
22. Written verification from Douglas County Fire District #2 that fire hydrants and fire flow have been provided in compliance with DCC 15.08 (Int'l Fire Code 507 & Appendix B - 1000 gallons per minute flow); and emergency ingress and egress have been provided in compliance with DCC 15.08 (Int'l Fire Code Appendix D) must be submitted to the county prior to final plat approval.
23. Written verification from Douglas County Sewer District No 1 that the subject property has been annexed into the District's Service Boundary must be provided prior to final plat approval.
24. Written verification of the availability of public water to each lot must be submitted to the Chelan Douglas Health District prior to final plat approval.

25. The following language must appear with the Health District signature line:
 - 25.1 “The Health District makes no representation as to the legal availability of water to this plat.”
26. Final plans for on-site and off-site improvements designed by a professional engineer licensed in the State of Washington shall be submitted to and approved by Douglas County prior to construction. Construction plans shall be prepared in accordance with the requirements of Douglas County Code Chapters 12, 17 and 18, to AASHTO Policy on Geometric Design of Highways and Streets, in accordance with the current Douglas County Comprehensive Road Standards as updated at the time of final plat approval, and other applicable existing code requirements.
27. Final design plans for the improvements in public right-of-way and affecting existing public facilities require County acceptance prior to the start of construction.
28. Prior to final plat approval, a 1-foot non-vehicular access easement shall be recorded along the eastern boundary with Empire Avenue. A note on the plat shall indicate that access is limited to private, joint use access easements provided.
29. The required road improvements for this development shall include:
 - 29.1 Half street frontage improvements to Empire Avenue in accordance with Figure 3-8, Urban Arterial. Right-of-way shall be dedicated as necessary to bring the width from monumented centerline up to thirty five (35) feet.
 - 29.2 Construction and/or slope easement shall be provided and noted on the final plat map as necessary to accommodate future Empire Avenue improvements and construction.
 - 29.3 Half Street frontage improvements to 32nd Street NW in accordance with figure 3-7b, Urban Local Access. 32nd Street NW right-of-way shall be dedicated to bring the width from monumented centerline up to twenty five (25) feet.
 - 29.4 Half street frontage improvements to NW Fir Avenue in accordance with Figure 3-7B Urban Local Access NW Fir Avenue right of way shall be dedicated to bring the width from monumented centerline up to twenty five (25) feet.
 - 29.5 Access easements shall be designed and constructed in accordance with Douglas County Code 12.53 and figures 4-1, 4-2, and 4-3 (Driveways and Access Easements).
 - 29.6 A turn around (Douglas County Road Standards figure 3-9) shall be provided at the end of NW Fir Avenue. Turnaround improvements shall consist of a pavement section in accordance with figure 3-7b of the Road Standards; including curb, gutter, and sidewalk, storm drainage facilities, and provisions

for snow removal and storage. Measure to accommodate snow removal and storage shall be shown on the construction plans and final plat.

30. Driveway access easements shall provide access to the lots as follows:
 - A line: Lots 26, 27, 28, 29, and 30
 - B line: Lots 24, 25, 31, and 32
 - C line: Lots 18, 19, 20, 21, 22, and 23
 - D line: Lots 13, 14, 15, 16, 17 and Detention Tract
 - E line: Lots 7, 8, 9, 10, 11, and 12
 - F line: Lots 1, 2, 3, 4, 5, and 6
31. All new or revised driveways and accesses onto a County Road (including temporary or construction accesses) require an approved access permit as per the procedures in DCC 12.24, Approaches to County Roads. The final plat mylar shall identify that all proposed lots shall access from the internal roadway.
32. Prior to final plat approval and/or release of financial security, the engineer of record shall provide written certification that the final construction plans for the internal road, utility plans, stormwater systems, and site grading plans have been constructed in accordance with the conditions of approval, Douglas County Code, the approved construction plans, and geotechnical assessments. Monitoring shall be required as determined appropriate by the engineer or geologist of record and in accordance with the Comprehensive Road Standards (DCC) with final reports submitted to Douglas County.
33. Prior to final plat approval, requirements for acceptance of the constructed improvements shall be met in accordance with the Road Standards, including Section 12.56.110 Final Acceptance and 12.50.110 Performance Assurance, B. Maintenance Performance.
34. Utility installation/replacement/upgrade within the Douglas County right-of-way, including, but not limited to Empire Avenue, 32nd Street NW and NW Fir Avenue shall be approved by Douglas County. Damage resulting from construction activities (including utility extensions required to provide necessary services to the proposed development) shall be repaired to the satisfaction of Douglas County, by the applicant. The extent of repair and/or replacement will be determined during construction plan review and during field inspection of the proposed work within the right-of-way. Repairs shall be completed prior to final plat approval. Repair of existing road surfaces may include overlays of the existing road surface, full or half street width, depending upon the extent of impact to the existing road surface due to the construction activities. Existing moratoriums on public roads may limit utility work to boring or pushing. DCC 12.20.060, Specific requirements – Underground utilities.
35. Five foot utility easements are required along all lots or tracts with county road frontage in accordance with the Douglas County Road Standards.
36. A final storm water drainage plan designed by a professional engineer licensed in the State of Washington shall be submitted to and approved by Douglas County prior to construction. Construction and post-construction stormwater shall be addressed in accordance with Douglas County Code and the recommendations contained within the Stormwater Management Manual

for Eastern Washington (Ecology). The plan shall take site grading into consideration and its effect on adjacent properties and shall accommodate off-site runoff. Measures to address stormwater infiltration during frozen soil conditions shall be included. The stormwater plan must have supporting calculations and final "as built" drawings shall be delivered to Douglas County upon completion. Any modifications to the system during construction shall be analyzed by the engineer and the results provided to the County to demonstrate the constructed stormwater facilities meet the conditions of approval.

37. Prior to final plat approval, an operation and maintenance agreement must be recorded and AF# referenced on the face of the final plat regarding the private stormwater facilities. Said agreement shall be executed on standard forms approved by Douglas County. It shall be clearly noted on the face of the final plat that Douglas County will not maintain the private stormwater facilities (tracts). The agreement shall specify the homeowners of the subdivision as having responsibility for the long-term maintenance of the private stormwater drainage system within the development.
38. A note on the face of the plat shall specify that Douglas County shall have the right to periodically inspect these stormwater facilities to verify design capacity and operation. A perpetual access easement shall be granted to the County and/or other governmental agencies having jurisdiction regarding stormwater facilities
39. The Preliminary Drainage Report indicates that stormwater is proposed to be infiltrated on site. Infiltration testing shall be performed prior to acceptance of the final construction plans and stormwater report, in order to verify the suitability of the site to accommodate the proposed system. It should be noted that drainage from this site has impacted properties westerly of NW Fir Avenue in the vicinity of the proposed C line. Ponding of water and flow across NW Fir Avenue have overwhelmed the existing culvert and cause damage to properties near 32nd Place and Fir.
40. In accordance with the Stormwater Management Manual for Eastern Washington, design and maintenance criteria for infiltration ponds, and the policies of the Greater East Wenatchee Stormwater Utility Management Team, stormwater facilities shall be above ground facilities, located on a separate tract which is adjacent to and providing an emergency overflow to the public right of way. This policy provides for maintenance, inspection and access to the facility and provides additional protection to downstream properties from overflows in the event of failure of the stormwater facility.
41. Stormwater detention facilities shall be located on a separate tract, under the functional control of the homeowners association with each lot having an undivided interest in the tracts.
42. Erosion control measures shall be designed in accordance with the Stormwater Management Manual for Eastern Washington (SWMMEW). Best Management Practices shall be employed to prevent runoff from flowing over the site slopes. Disturbed areas shall be re-vegetated and maintained throughout construction. Final grading shall incorporate permanent erosion control measures which routes stormwater runoff away from site slopes and directs the collected water to appropriate discharge locations.

43. Individual/common plan of development for this proposal exceeds 1 acre of disturbed ground. This meets the threshold used by the Washington State Department of Ecology in administering their General Permit to Discharge Storm Water Associated with Construction Activity. If required the permit shall be obtained prior to beginning ground-breaking activities. Acquisition of permits is the responsibility of the applicant.
44. The applicant shall be responsible for preventing mud, dirt and debris from leaving the site, including stormwater runoff from being tracked otherwise discharging onto the public right-of-way or adjacent properties.
45. Preliminary approval shall expire 7 years from the date of Notice of Action by the Douglas County Hearing Examiner. Final plat approval after the expiration will require the submittal of a new preliminary application and approval based on applicable documents and codes in effect at the time of re-application.

Dated this 26th day of September, 2013.

DOUGLAS COUNTY HEARING EXAMINER



ANDREW L. KOTTKAMP

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.