

# **Town of Yacolt**

## **Town Council Meeting Agenda**

**Monday, September 13, 2021**  
**7:00 PM**  
**Town Hall / Virtual / Telephonic**

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### **Call to Order**

### **Flag Salute**

### **Roll Call**

### **Late Changes to the Agenda**

### **Approve Minutes of Previous Meeting(s)**

- [1.](#) DRAFT Minutes from 8-9-21 Council Meeting
- [2.](#) DRAFT Minutes from 8-23-21 Budget Workshop and Executive Session

### **Citizen Communication**

***Anyone requesting to speak to the Council regarding items not on the agenda may come forward at this time. Comments are limited to 3 minutes. Thank you.***

### **Unfinished Business**

### **New Business**

- [3.](#) Conditional Building Permit
- [4.](#) Fire Marshal Interlocal Agreement
- [5.](#) Security Cameras

### **Town Clerk's Report**

### **Public Works Department Report**

### **Attorney's Comments**

### **Citizen Communication**

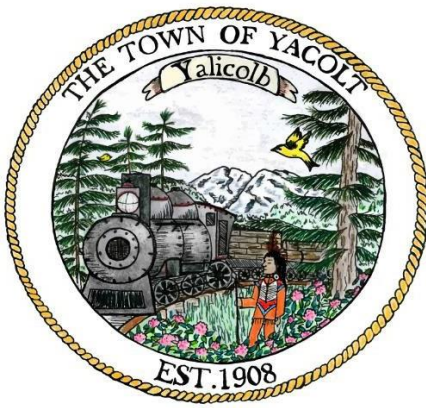
***Anyone requesting to speak to the Council regarding items not on the agenda may come forward at this time. Comments are limited to 3 minutes. Thank you.***

**Council's Comments**

**Mayor's Comments**

**Approve to Pay Bills on Behalf of the Town**

**Adjourn**



**Town of Yacolt**  
**Yacolt Town Council Meeting**  
**Minutes**  
**Monday, August 9, 2021**  
**7:00 PM**  
**Town Hall / Virtual / Telephonic**

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**Call to Order**

7:00 PM

**Flag Salute**

**Roll Call**

Present:

Mayor Listek, Council Members Michelle Dawson, Joshua Beck, Ronald Homola, Town Attorney David Ridenour

Absent: Amy Boget, Marina Viray

Marina Viray had previously emailed to ask to be excused for this meeting. Mayor Listek asked Council if they would like to entertain a motion to excuse either Council Member's absence. A motion was made to excuse Council Member Viray's absence.

**Motion:** Dawson

**2<sup>nd</sup>:** Beck

**Aye:** Dawson, Beck, Homola

**Nay:** 0

**Absent:** Boget, Viray

***Motion Carried***

**Late Changes to the Agenda**

No Executive Session

**Approve Minutes of Previous Meetings**

**Motion was made to approve the minutes from the meeting July 12, 2021**

**Motion:** Beck

**2<sup>nd</sup>:** Homola

**Aye:** Dawson, Beck, Homola

**Nay:** 0

**Absent:** Boget, Viray

***Motion Carried***

**Citizen Communication**

None

**Unfinished Business**

None

## **New Business**

### **Liquor Licenses**

Council Member Beck made a motion that we not object to the renewal of the liquor licenses for both the Backroads and the Yacolt Trading Post.

**Motion:** Beck      **2<sup>nd</sup>:** Dawson

**Aye:** Beck, Dawson    **Nay:** 0      **Abstain:** Homola      **Absent:** Boget, Viray

**Majority of Quorum voted "Aye" so Motion Carried**

### **ARPA LFRF Funds**

Mayor Listek announced how much we have and still will be receiving, and had the Clerk explain how and when it must be used, and that this is something which must be considered as we approach budgeting for next year. (Clerk Fields, along with Yacolt resident Mike Ranweiler, took a webinar on getting grants for broadband, and are looking into the possibility of using ARPA funds as well as private/public partnership grants to improve local broadband coverage.) Both broadband and water infrastructure were areas where citizens have expressed a hope for help. Council wanted to wait until all council members were present to have a thorough discussion on this topic.

### **Town Clerk's Report**

- Both Parks were rented out numerous times in July, but no bookings for August as yet
- Sold 5 cemetery plots since the last meeting – people are just buying the deeds for future use
- Preparing to issue a few new building permits; construction in Town should be starting soon
- Looking forward to the first Budget Workshop of the year; it's scheduled for Aug. 23 at 6pm. It will be open to the public. Clerk is signed up for a budgeting seminar on Aug. 19-20, so Town Hall may be closed those two days.
- Clerk will be taking days off Aug. 24-26

### **Public Works Department Report**

- Continuing to keep up with vegetation control
- Will be working on sidewalk repairs at Pine & Farrer and on W. Christy Street
- Taking down a portion of a damaged tree at the Rec Park this week
- Delivered a couple of nuisance letters
- Floor of the Town Square is done (Thank you, Ben!) Steps and more dirt leveling to be completed hopefully this week
- Welcome back, Terry!

### **Attorney's Comments**

None

### **Citizen Communication**

Someone asked the Mayor how many times she got dunked at the National Night Out, and the Mayor joked, "Too many!"

### **Council's Comments**

Beck- A big THANK YOU to Pastor Bill Douglas and Marshall Adams for helping with the BBQ at National Night Out

### **Mayor's Comments**

- Thank you to Council Members Beck, Homola, and Dawson for all the time and help they gave for the National Night Out. It was a huge success. Also Thank You to Niko Listek for taking a spell in the dunk tank. Also Thank You to the EMS and Fire Station for having their fire truck and ambulance there for the kids (and grown-ups too!) to check out.
- There was a good turnout for the Outdoor Market on Saturday. The train was running and there was a consistent flow of people
- Don't forget the Budget Workshop is August 23 at 6pm

### **Approve to Pay Bills on Behalf of the Town**

**Motion was made to approve paying the bills on behalf of the Town**

**Motion:** Dawson      **2<sup>nd</sup>:** Homola

**Aye:** Dawson, Beck, Homola,

**Nay:** 0

**Absent:** Boget, Viray

***Motion Carried***

### **Adjourn**

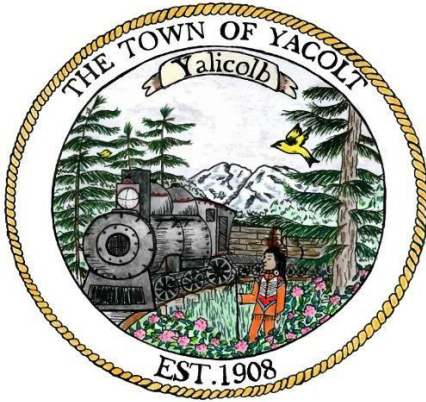
Meeting was adjourned at 7:21 p.m.

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Mayor Katelyn Listek

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Clerk Stephanie Fields



**Town of Yacolt**  
**Special Meeting Budget Workshop**  
**and Executive Session Minutes**  
**Monday, August 23, 2021**  
**6:00 PM**  
**Town Hall**

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**Call to Order**

6:00 PM by Mayor Listek

**Flag Salute**

**Roll Call**

Present: Council members Amy Boget, Michelle Dawson, Joshua Beck, Ronald Homola, Marina Viray

Staff: Mayor Katelyn Listek, Attorney David Ridenour, Public Works Supervisor Terry Gardner

**Late Changes to the Agenda**

None

**New Business**

***Budget Workshop***

Mayor Listek listed items she and Public Works would like to see covered in next year's budget. Council members each listed items they would like to see prioritized. Then the Mayor read a list of suggestions she has gotten from Townspeople.

***Executive Session***

Executive Session re: possible litigation. Mayor Listek closed the public meeting and opened the executive session at 7:22 p.m., stating that she anticipated the session would take until 8:02 p.m. (40 minutes). At 8:02 pm, Mayor Listek re-convened the public meeting, stated that the Executive session would take until 8:30 p.m., and re-closed the public meeting, re-opening the executive session. At 8:30 pm, Mayor Listek noted that there were no public members still present at the public meeting. The executive session then continued until 8:45 pm, at which time the Mayor re-convened the public meeting.

**Adjourn**

8:45 pm



## Town of Yacolt Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Mayor Listek

**Group Name:**

**Address:** 202 W. Cushman  
Yacolt, WA 98675

**Phone:** 360-686-3922

**Email Address:** mayorlistek@townofyacolt.com

**Alt. Phone:**

### ITEM INFORMATION:

**Item Title:** Conditional Building Permit

**Proposed Meeting Date:** September 13, 2021

**Action Requested of Council:** Consider approval of Conditional Building Permits for two Single Family Residences at the Proposed Short Plat at 125 S. Spruce Ave. in Yacolt

**Proposed Motion:** "I move that Mayor Listek be allowed to execute the attached Agreement and that the Town issues Conditional Use Permits per the Agreement."

**Summary/ Background:** The property at 125 S. Spruce Ave. was conditionally approved for a 3-Lot Short Plat on March 8<sup>th</sup> of this year. To this point, most but not all conditions have been met for final approval/recording of the Short Plat. A Building Permit has been issued for the home on Lot #3, and construction has begun, as this lot and home were previously existing and this will not affect feasibility of the short plat. The Owner/Builder expects to have all conditions for the Short Plat met soon; however, with the seasons changing, he has asked to be able to begin excavation and building on the other two lots as soon as possible. The Town would like to accommodate his wishes, provided the Owner/Builder agrees that construction on these remaining two lots (Lots #1 & 2) will be at his own risk. If Council approves, this Agreement may be signed as early as tomorrow, and the Conditional Permits will be issued right away. A DRAFT copy of the Agreement is attached for your review.

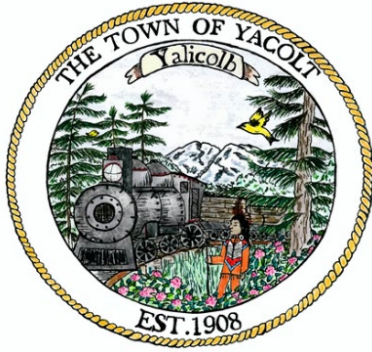
**Staff Contact(s):** Clerk Stephanie Fields

[clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

Mayor Katelyn Listek

[mayorlistek@townofyacolt.com](mailto:mayorlistek@townofyacolt.com)

(360) 686-3922



**Town of Yacolt**  
**Building & Land Use Department**

202 W. Cushman Street  
Yacolt, WA 98675

Tel: (360) 686-3922

**Katelyn J. Listek**  
Mayor

**Conditional Building Permit Agreement**

THIS AGREEMENT is made and entered into on this \_\_\_\_\_ day of September, 2021, by and between the Town of Yacolt, a Washington municipal corporation, ("Town" or "Yacolt"), and Elwood Holdings, LLC, ("Owner" or "Applicant").

**Whereas**, the Applicant is the current owner of real property located at 125 S. Spruce Avenue, Yacolt, WA 98675, Assessor's Tax Parcel #65150-000, which property has been approved by the Town for a 3-lot short plat subject to terms and conditions described in the approval documents, (hereafter the "*Short Plat*");

**Whereas**, the Short Plat is not yet complete, there being a number of approvals and conditions that remain to be satisfied by the Owner before the three resulting building lots will be approved for further development of improvements;

**Whereas**, the Applicant desires to begin construction of single-family residences on each of the three lots to be created by the Short Plat, (designated in the Short Plat documents as lots 1, 2 and 3);

**Whereas**, the Applicant has satisfied some, but not all, of the required submissions needed to process and approve building permits for the proposed homes;

**Whereas**, the Applicant is satisfied that it will be able to timely satisfy the remaining conditions of the Short Plat and of the individual building permit applications prior to seeking certificates of occupancy for any of the homes;

**Whereas**, the Applicant is willing to provide needed approvals and documentation to the Town prior to engaging in any construction activities for which such approvals and documentation are requested or required by the Town to allow for necessary processing, review and inspections;

**Whereas**, the Applicant has requested conditional building permits from the Town that would allow him to proceed with the construction of three single-family homes prior to satisfying all requirements of the Short Plat and the residential building permits, so that his projects are not unreasonably delayed;

**Whereas**, the Applicant is willing to a). assume all risks in commencing the construction; b). obtain all necessary approvals in the time set out in this Agreement or as required by the Town; c). at the Applicant's own expense, remove the buildings and restore the site in the manner specified in the Agreement if approvals are not obtained or conditions not satisfied as set out in the Agreement; and, d). comply with such other conditions as the Town considers necessary, including responsibility for the costs of providing conditional building permits and providing requested financial security for the Applicant's covenants as described in this Agreement;



**Whereas**, subject to the terms of this Agreement, the Town is willing to allow the Applicant to proceed with construction of the proposed homes even though all legal requirements necessary to obtain normal full building permits have not yet been met;

**Whereas**, use or occupancy of the new homes will be prohibited until all usual and reasonable requirements for certificates of occupancy have been satisfied; and,

**Whereas**, the Town agrees to issue a conditional building permit for each of the three lots that are being created by the Short Plat, provided that the Owner agrees to assume all risks involved in commencing construction before every requirement for a building permit has been met, and provided that the Owner agrees to indemnify and hold the Town and its agents harmless from and against all claims arising from the issuance of the conditional building permits:

**Now Therefore**, in consideration of the mutual covenants contained herein, and to ensure the performance of the conditions required for the Town's approval of the Applicant's Projects, the Parties hereto agree one with the other as follows:

### **Agreement**

1. **Purpose:** The general purpose of this Agreement is to provide an opportunity for the Applicant to simultaneously construct and develop its 3-lot Short Plat while building three single-family residential buildings on the proposed resulting building lots. The conditional building permits will provide for the partial approval and construction of three homes before full building permits are approved. The Town may require pertinent information from the Applicant prior to inspecting or authorizing intermediate steps in the construction. No certificate of occupancy can be provided under the conditional building permits. The Applicant will need to resolve all remaining Short Plat final approval requirements and building permit issues before the Town will replace any of the conditional building permits with a regular building permit, or release a certificate of occupancy. Subject to necessary intermediate submittals, reviews and inspections, the parties generally expect that the conditional building permits provided under this Agreement will allow for the full construction of the three proposed new homes.
2. **Property Descriptions:** The lands and projects affected by this Agreement are described as follows:
  - 2.1. Short Plat: "Short Plat" refers to the pending 3-lot short plat located at 125 S. Spruce Avenue, Yacolt, as approved with conditions by the Town Council on March 8, 2021. The Property being short-platted is also legal described as YACOLT ACRE TRACTS #1 LOT 22 #3 LOT 23, Clark County, Washington.
  - 2.2. Lot 1: "Lot 1" refers to the proposed building lot described as Lot 1 in the Short Plat.
  - 2.3. Lot 2: "Lot 2" refers to the proposed building lot described as Lot 2 in the Short Plat.
  - 2.4. Lot 3: "Lot 3" refers to the proposed building lot described as Lot 3 in the Short Plat.
3. **Yacolt's Obligations and Covenants:** The Town covenants and agrees to process the Applicant's building permit applications and to issue a conditional building permit for Lot 1, Lot 2, and Lot 3 of the Short Plat, for homes to be constructed pursuant to the terms and conditions set forth in this Agreement.

- 3.1. Approvals and Submittals Required Prior to Issuance of Conditional Building Permits: The conditional building permits will not be issued until the Town has received and processed all information, documents, deposits, and approvals deemed necessary by the Town. By way of example, a conditional building permit will not be issued if the plan review results in a denial of the plans based on any critical and/or life safety design parameters, (e.g., the location of the building on-site, deficient type of construction, egress, or energy efficiency codes, etc.). The Town Clerk will provide a list to the Applicant of the submittals needed before a conditional building permit can be issued.
- 3.2. Approvals and Submittals Required During the Course of Construction: The Town Clerk will communicate with the Applicant about other submittals, deposits, payments, information, approvals, corrections, and other items that may be required during the course of construction.
- 3.3. Approvals and Submittals to be Delayed: At the Applicant's request, and based on the Applicant's assumption of the risk, the Town agrees to issue conditional building permits prior to the receipt of the following:
  - 3.2.1. Final Short Plat approval and recording of the final plat.
  - 3.2.2. Fire Marshal review and approval of fire flow, access roads, etc.
  - 3.2.3. Clark Public Utilities review and approval of water connection and related matters.
  - 3.2.4. Clark Public Utilities review and approval of electric connection and related matters.
  - 3.2.5. Clark County Health Department approval of septic system design, placement, and related matters.
- 3.4. Construction and Inspections: Upon the issuance of a conditional building permit by the Town Clerk, the Applicant may begin construction, pull trade permits, and call for inspections. Work may proceed until the work authorized is completed or the date that the conditional building permit expires. The work being performed will be at the Applicant/Owner's risk concerning requirements to meet all applicable building codes.
- 3.5. Extent of Permitted Construction: The construction permitted by this Agreement will not be limited other than as may be required by future events in order to comply with any laws, regulations or codes as they apply to the Short Plat or the single-family homes. No use of the homes will be allowed, and no certificate of occupancy will be issued until the conditional building permit is released and a regular building permit is issued.
- 3.6. Release of Owner's Obligations: Upon submission of all documentation satisfactory to the Town and after the full building permit has been issued, the Town shall a). give to the Owner a release of all of the Owner's obligations under this Agreement, and b). release any recorded memorandum of this Agreement. In the event that the Short Plat is completed, the Owner may request a partial release of one or more of the resulting building lots upon the satisfaction of the Owner's responsibilities to the satisfaction of the Town.
4. **The Applicant/Owner's Obligations and Covenants:** It is understood by all parties that issuance of a conditional building permit is completely at the Applicant's and Owner's risk and provides no assurance that either a full building permit or a Certificate of Occupancy will be issued by the Town. The Owner and Applicant also agree to each of the following conditions:

- 4.1. Any work found that does not comply with the final approved plans shall be corrected by the Applicant.
- 4.2. To file any required plans, specifications, submittals, deposits, payments, information, approvals, corrections, and other items that may be requested by the Town to support a complete building permit application and as required to process the Applicant's construction progress.
- 4.3. Prior to requesting use, occupancy, or a certificate of occupancy, to obtain all prerequisite approvals for final acceptance and recording of the Short Plat.
- 4.4. Prior to requesting use, occupancy, or a certificate of occupancy, to obtain all prerequisite approvals for the issuance of a full building permit for the subject Lot.
- 4.5. To not occupy/use or permit to occupy/use a residence constructed pursuant to this Agreement prior to the issuance of a full building permit and the subsequent granting of permission to occupy/use the subject Lot.
- 4.6. To immediately stop construction on the subject lands and secure the site to the satisfaction of the Town if, in the opinion of the Town, any impediment arises to prevent the lawful continuation of the project.
- 4.7. To immediately take measures to remove the project construction improvements and restore the site if all necessary approvals have not been obtained within one year from the start of construction and if removal of the subject project construction improvements has been ordered in writing by the Town.
- 4.8. To comply with all approvals, laws, regulations and codes that are applicable to the subject property and the projects anticipated hereunder except as modified by this Agreement.
- 4.9. To compensate the Town for any and all costs incurred by the Town in the preparation, execution and subsequent performance of this Agreement.
- 4.10. To comply with all related agreements and covenants, including without limitation, the Cost Recovery Agreement between the Applicant and the Town dated by the Applicant on August 6, 2021.
- 4.11. To not call into question, directly or indirectly, in any proceedings whatsoever, in law or in equity, the right of the Town to enter into this Conditional Building Permit Agreement or to enforce each and every term, covenant and condition herein contained, and this Agreement shall be pleaded as an estoppel against the Applicant/Owner in any such proceedings.
- 4.12. That the Applicant has researched and inspected the Short Plat and the property prior to signing this Agreement, and is satisfied with all aspects of its responsibilities for the Short Plat, the proposed home construction, and any other intended future use of the property.
- 4.13. Indemnification: To indemnify, hold harmless and defend the Town, its elected and appointed officials, its employees, agents, representatives, volunteers and others working on behalf of the Town, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of any conditional building permit issued pursuant to this Agreement, including all suits or actions of every kind or description brought against the Town, either individually or jointly with Applicant, for or on account of any damage or injury to any person or persons or

property, caused or occasioned or alleged to have been caused by, or on account of, any of the activities conducted by or caused to be conducted by Applicant, or through any negligence or alleged negligence in safeguarding the Town or members of the public, or through any act, omission or fault or alleged act, omission or fault of the Applicant, its employees, agents, volunteers, subcontractors or others under the direction, control or under any contractual relationship with the Applicant.

The indemnity provided by the Applicant in this Section shall not apply to the extent losses are caused by the recklessness or willful misconduct of the Town, its elected and appointed officials, officers, employees, agents and representatives.

This indemnity and hold harmless agreement by the Applicant shall include any claim made against the Town by an employee of the Applicant, Applicant's sub-contractor or agent of the Applicant, even if the Applicant is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. For this purpose, the Applicant, by mutual negotiation, hereby waives any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51, RCW.

5. **Assumption of Risk:** The Applicant affirms that it understands there is a risk involved with building homes pursuant to a conditional building permit. For example, if for some reason the Short Plat cannot be finalized, or the new homes cannot be occupied due to the fact that approvals and permits for this property have not been pre-approved by the Town, the Applicant will not receive a final building permit, will not obtain a completed Short Plat, and/or will not be able to use or sell the homes constructed pursuant to this Agreement.
6. **Corrective Actions Upon Failure of Conditions:** In the event and to the extent that conditions of the Short Plat and/or of the individual single-family residences are not satisfied, the Applicant agrees to remove any structure for which a conditional building permit has been issued and restore the site to the conditions present at the time of the Short Plat approval. Restoration work must commence within thirty (30) days of written notice by the Town and be completed no later than sixty (60) days following written notice or at such later time as may be directed or agreed by the Town.

If the Town determines that a building has not been removed or a site not restored as required by this Agreement, the Town may cause the building(s) to be removed and the site restored and for this purpose the Town, its inspectors and agents are authorized to enter upon the land and into the building(s) covered by this Agreement at any reasonable time without a warrant, and perform such work as may be necessary to restore the property. The Owner agrees to reimburse the Town for any costs and fees incurred as part of the work or repairs performed by the Town or its agents. The Owner agrees to make such reimbursement in full within twenty (20) days of the date the Town provides written notice(s) of such costs and fees. This provision shall not be construed as creating an obligation on the part of the Town or its representatives to perform such work.

7. **Remedies:** If the Applicant fails to abide by the terms of this Agreement, the Town shall have the right to seek specific performance, including a request for an immediate restraining order or preliminary injunction enforcing this Agreement, or to request a judgment for damages against all parties obligated to pay the same, or to foreclose the lien against the property, or to seek any other legal or equitable remedies provided by this Agreement or law. The rights and remedies described in this Agreement are cumulative and the use of any one right or remedy shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

7.1. Lien Rights: Should the Town incur any costs or fees, (including administrative or legal fees), in seeking remedies for any default by the Applicant under this Agreement, the Town shall have a lien on the land for such amounts, and may perfect such lien by recording a Claim of Lien with the Clark County Auditor.

7.2. Personal Guarantee: As part of the consideration to the Town for entering this Agreement, the owner of the Applicant, Roger Foley, agrees to guarantee the payment of all costs, fees, damages and interest due to the Town. Roger Foley executes this Personal Guarantee as a principal and not as a surety. The Applicant, Owner and Roger Foley shall be jointly and severally liable hereunder. The Applicant, Owner and Roger Foley waive presentment for payment, notice of non-payment, notice of dishonor, protest and notice of protest. The Applicant, Owner and Roger Foley agree to remain fully bound notwithstanding the release of any party, extension or modification of any terms of this Agreement.

\_\_\_\_\_  
Roger Foley, Personal Guarantor

\_\_\_\_\_  
Date

8. **Notices**: All notices and other communications between the parties shall be in writing and shall be hand-delivered, emailed, or mailed by first-class mail, postage prepaid, as follows:

If to the Town:

Town of Yacolt  
202 W. Cushman Street  
Yacolt, WA 98675

P. O. Box 160  
Yacolt, WA 98675

Email: [clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

If to the Applicant/Owner:

Elwood Holdings, LLC  
Attn: Roger Foley  
P.O. Box 130  
Brush Prairie, WA 98606

20917 N.E. 72<sup>nd</sup> Avenue  
Battle Ground, WA 98604-5227

Email: [roger.foley505@gmail.com](mailto:roger.foley505@gmail.com)

Any party hereto may specify a different address for the giving of notices by notifying the other party in writing of the new address.

9. **Integration**: This Agreement sets forth and establishes the entire understanding between the Town and the Applicant with respect to its subject-matter, being the initial understanding of the terms applicable to the requested issuance of conditional building permits for the three unfinished lots that are part of the Applicant's ongoing Short Plat. The agreement of the parties consists of other documents, correspondence and agreements, including without limitation, the Cost Recovery Agreement dated by the Applicant on August 6, 2021, and documents related to the Short Plat. Any prior discussions or representations by or between the parties relating specifically to the special terms relating to conditional building permits are merged into and rendered null and void by this Agreement.

10. **Time of the Essence:** Time is of the essence with respect to the performance of each of the covenants and agreements set forth herein. The Applicant may, by written request, seek extensions of time with respect to the expiration dates of permits or other deadlines, and the Town may grant any such request on such terms and conditions as such the Town may see fit to impose. The right of the Town to require strict performance by the Applicant of any and all obligations imposed upon it hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.
11. **Further Assurances:** The parties shall execute and deliver such other documents and instruments and take such further actions as may be reasonably necessary or required to consummate the transactions contemplated by this Agreement.
12. **Non-Waiver:** The failure of any party to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right, or of any other covenants or agreements, but the same shall be and remain in full force and effect.
13. **Venue and Choice of Law:** The Parties agree that this Agreement shall be governed by the laws of the State of Washington and that they are subject to the jurisdiction of the State of Washington. Venue for any litigation arising out of this Agreement shall be in the Clark County Superior Court.
14. **Attorney's Fees:** The parties agree that in the event any legal action is taken to enforce the provisions of this Agreement or to collect payment due under the terms of this Agreement, the prevailing party shall be entitled to an award for its costs and reasonable attorney's fees, including costs and fees on appeal.
15. **Representation:** The parties understand that this Agreement has been prepared by the attorney for the Town. The Applicant has obtained the advice of its own counsel with respect to its rights and obligations under this Agreement, or has had the opportunity to seek such advice. The Applicant agrees that it is not relying on any representations or advice by the Town or its attorney and that it has satisfied itself as to the terms, duties and risks of signing this Agreement. Each party intends that this Agreement in all respects shall be deemed and construed to be equally and mutually prepared by all parties, and it is hereby expressly agreed that any uncertainty or ambiguity shall not be construed in favor of or against any party.
16. **Modification:** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended, modified or terminated orally, or in any manner other than by an instrument in writing signed by the parties hereto.
17. **Incorporation of Recitals:** Any recitals and background information at the beginning of this Agreement are contractual and shall be considered or referred to in resolving questions of interpretation or construction.
18. **Captions:** The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope of intent of this Agreement or any of the provisions hereof.
19. **Assignment of Conditional Building Permits:** The Owner/Applicant shall not assign this Agreement or any conditional building permit issued pursuant to this Agreement without the prior written consent of the Town, which consent is not to be unreasonably withheld by the Town provided that any such assignee executes an agreement assuming the obligations of the Owner under this Agreement in a form satisfactory to the Town, and subject to the Town's satisfaction with the assignee's financial strength.

20. **Successors and Assigns:** This Agreement and the covenants, provisions and conditions described herein shall be binding upon the parties hereto, their successors and assigns.
21. **Severability:** If any provision of this Agreement shall be found or declared by a Court of competent jurisdiction to be invalid, unenforceable or *ultra vires*, then such provision shall conclusively be deemed to be severable and the remainder of this Agreement shall be and remain of full force and effect.
22. **Memorandum of Agreement / Recording:** This Agreement shall be summarized and executed in the form of a Memorandum of Agreement for the purposes of recording with the Clark County Auditor's Office, in the form attached hereto as Exhibit A.
23. **Multiple Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in Yacolt, Washington, this \_\_\_\_\_ day of September, 2021.

Elwood Holdings, LLC  
(Applicant / Owner)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Roger Foley, Governor

TOWN OF YACOLT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Katelyn J. Listek, Mayor

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Stephanie Fields, Town Clerk

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After recording mail to:

**David W. Ridenour**  
Attorney at Law  
13019 N.W. 47<sup>th</sup> Avenue  
Vancouver, WA 98685  
(360) 991-7659

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**MEMORANDUM OF AGREEMENT**

**Grantor:** Elwood Holdings, LLC, a Washington licensed limited liability company.

**Grantee:** The Town of Yacolt, a Washington municipal corporation.

**Tax Parcel No:** 65150-000.

**Abbreviated Legal Description:** YACOLT ACRE TRACTS #1 LOT 22 #3 LOT 23.

**Subject Matter:** Conditional Building Permits.



## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into effective this \_\_\_\_\_ day of September, 2021, by and among Elwood Holdings, LLC, a Washington licensed limited liability company, (hereafter the “Grantor”), and the Town of Yacolt, a Washington municipal corporation, (hereafter the “Grantee”).

### RECITALS

Whereas, the Grantor has agreed to convey certain lien rights and to assume certain financial covenants in exchange for the Grantee’s agreement to provide conditional building permits on real estate located in the County of Clark, State of Washington, Assessor’s Tax Parcel number 65150-000, and more particularly described as YACOLT ACRE TRACTS #1 LOT 22 #3 LOT 23, (hereafter the “Property”), in accordance with the terms of a Conditional Building Permit Agreement dated effective September \_\_\_\_\_, 2021, (hereafter the “Agreement”), which Agreement is expressly incorporated herein by reference and made a part hereof as though fully set forth herein:

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee agree as follows:

1. All members of the general public are hereby placed on notice of inquiry as to the specific provisions of the Agreement, all of which are incorporated herein by reference with the same force and effect as if herein set forth in full.
2. This Memorandum may be recorded in the real estate records of Clark County, Washington, in lieu of recording the entire Agreement, which Agreement contains, without limitation, the following provisions:
  - a). Lien Rights: The Grantor’s conveyance to the Grantee of a right to lien the Property for any costs or fees incurred by the Grantee in seeking remedies for any default by the Grantor under the Agreement.
  - b). Limited Use: The Grantor’s agreement that no use of the improved Property may be made, and no Certificate of Occupancy will be issued for completed improvements on the Property, until the conditions stated in the Agreement are satisfied.
3. The Agreement will terminate and this Memorandum of Agreement will be released upon the satisfaction by the Grantor of all conditions stated in the Agreement, or upon the exercise and satisfaction by the Grantor of Grantor’s remedies as described in the Agreement. Upon satisfaction of the terms of the Agreement, the Grantee shall execute and record a release of this Memorandum of Agreement.

4. This Memorandum is prepared for purposes of recording and shall not alter or affect in any manner the rights and obligations of the Grantor or the Grantee under the Agreement. In the event of any conflict between this Memorandum and the terms of the Agreement, the terms of the Agreement shall prevail.

IN WITNESS WHEREOF, this Memorandum of Agreement has been executed to be effective as of the date and year first above written.

Elwood Holdings, LLC  
“Grantor”

\_\_\_\_\_  
Roger Foley, Governor

The Town of Yacolt  
“Grantor”

\_\_\_\_\_  
Katelyn J. Listek, Mayor

STATE OF WASHINGTON     )  
  ) ss  
County of Clark            )

On this day personally appeared before me Roger Foley, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of September, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON       )  
  ) ss  
County of Clark               )

I certify that I know or have satisfactory evidence that Katelyn J. Listek is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of September, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



## Town of Yacolt Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Mayor Listek

**Group Name:**

**Address:** 202 W. Cushman  
Yacolt, WA 98675

**Phone:** 360-686-3922

**Email Address:** mayorlistek@townofyacolt.com

**Alt. Phone:**

### ITEM INFORMATION:

**Item Title:** Fire Marshal Interlocal Agreement

**Proposed Meeting Date:** September 13, 2021

**Action Requested of Council:** Consider approving for the Town of Yacolt to enter into an interlocal agreement with the Clark County Fire Marshal

**Proposed Motion:** "I move that we negotiate an interlocal agreement with the Fire Marshal for inspection and review services."

**Summary/ Background:** This agenda item is for discussion only. The purpose is to discuss the benefits and costs of a proposed interlocal agreement with the Clark County Fire Marshal to assist the Town with services such as commercial building inspections, Code enforcement matters, and plan review/inspection of land use and building department applications. The Town had an Interlocal Agreement with the County in 1996, but that agreement is apparently no longer in effect. The Town prepared another interlocal agreement with the County in 2008, but that agreement was apparently never signed. In any event, the Town would benefit from a new and more comprehensive agreement with the County to provide all services available from the Fire Marshal. (The 1996 and 2008 agreements are attached for your information.)

**Staff Contact(s):** Clerk Stephanie Fields

[clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

Mayor Katelyn Listek

[mayorlistek@townofyacolt.com](mailto:mayorlistek@townofyacolt.com)

(360) 686-3922

INTERLOCAL AGREEMENT TO PROVIDE  
SERVICES AS FIRE MARSHAL

THIS AGREEMENT IS MADE AND ENTERED INTO THIS 22<sup>nd</sup> DAY  
OF October 1996, by and between the COUNTY OF CLARK, a municipal corporation,  
hereinafter referred to as "County" and the TOWN OF YACOLT, a municipal corporation  
organized under the laws of the State of Washington, hereinafter referred to a "Town".  
**WITNESSETH:**

**WHEREAS**, the County and the Town are desirous of entering into a mutual agreement  
wherein the County can provide certain services through its Fire Prevention Bureau; and,

**WHEREAS**, both the Town and the County have adopted the Uniform Fire Code, and  
said Uniform Fire Code is directly applied in specific occupancies within both the Town and the  
County; and,

**WHEREAS**, the operation and application of said Uniform Fire Code has achieved a  
successful program based on orderly and sound fire-safety principals which have inured  
themselves to the citizens of Clark County; and,

**WHEREAS**, the Town desires to provide a similarly successful program for orderly and  
sound fire-safety principals with respect to specific occupancies within its incorporated within its  
incorporated limits; and,

**WHEREAS**, the purpose of this agreement is to fulfill certain powers and authorities  
which are attributable to both the Town and the County and is a proper subject for an agreement  
under RCW 39.34 providing for cooperation between government entities,

**NOW THEREFORE**, it is mutually agreed as follows:

**1. SERVICES TO BE RENDERED:** The Fire Prevention Bureau of Clark County  
shall provide the enforcement and interpretation of building and fire codes as they pertain to fire  
protection and hazardous materials as adopted by the Town and any other codes pertaining to  
fire safety adopted by the Town. Said services shall include:

**A. Existing Occupancies:** Inspection of all commercial occupancies and  
structures containing commercial occupancies. Said inspections shall be conducted annually and  
as necessary thereafter to ensure compliance and as requested by the Town Fire Chief to strive  
for compliance with the fire protection and hazardous materials codes and ordinances adopted by  
the Town. Any inspections other than annual inspections shall be pre-approved by the Town or  
the Town Fire Chief.

**B. Fire Cause Determination Investigations:** Investigations necessary to  
determine the origin and cause of fires occurring within the Town when requested to do so by  
the Town or the Town Fire Chief.

C. **Incendiary Fire Investigation:** technical assistance and assistance in conducting investigations of incendiary or suspected incendiary fires when requested to do so by the Town or the Town Fire Chief.

2. **COMPENSATION:** The Town shall pay Clark County for the above services as follows:

A. **Existing Occupancy Inspection.** For occupancy inspections, the County shall be compensated at the rate of \$43.00 per hour of work performed during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday), and \$52.00 per hour, for work performed outside of normal County work hours (after 5:00 p.m. and before 8:00 a.m., Monday through Friday and all day Saturday and Sunday).

B. **Origin and Cause Fire Investigation.** For fire cause investigations, the County shall be compensated the rate of \$60.00 per hour for work performed during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday), and \$70.00 per hour, for work performed outside of normal County work hours (after 5:00 p.m. and before 8:00 a.m., Monday through Friday and all day Saturday and Sunday).

C. **Incendiary Fire Investigation.** For incendiary fire inspection, the County shall be compensated the rate of \$60.00 per hour for work performed during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday), and \$70.00 per hour, for work performed outside of normal County work hours (after 5:00 p.m. and before 8:00 a.m., Monday through Friday and all day Saturday and Sunday).

3. **METHOD OF PAYMENT:** The Town will pay all charges for services rendered under the terms of this agreement within thirty (30) days of receipt of an invoice for services. The Town reserves the right to pass on the fees to the business or property owner of the buildings for which services have been provided under the terms of this Agreement, and the Town may charge an additional sum for administrative fees in addition to the fee charged by the County.

4. **COMPLIANCE LITIGATION:** Any or all lawsuits origination with or initiated by the Town with respect to enforcing or ensuring compliance with the Uniform Fire Code shall be the responsibility to the Town through its appropriate officials.

5. **COVERAGE IN THE EVENT OF CLAIM OR SUIT:** The Town hereby contracts and agrees that the Town's current insurance coverage through the Association of Washington Cities will provide coverage to Clark County, its elected officials, officers, employees, and agents. The Town's insurance will defend Clark County, its elected officials, officers, employees, and agents from and against all liability, loss, damage, expense, action, and claims, incurred by Clark County, its elected officials, officers, employees, and agent in the defense thereof, arising directly or indirectly from the acts of Clark county, its elected officials, officers, employees, and agents acting in good faith and within the scope of their duties under this agreement. Fifteen days prior to any change in the Town's currently existing insurance coverage, the Town will notify the County of this event and give the County the option of amending or terminating this agreement.

6. **APPEALS:** Appeals regarding the interpretation of, or the suitability of alternate methods or materials to specific provisions of the Uniform Fire Code shall be in accordance with Yacolt Municipal Code section 15.10 130.

7. **TERMINATION:** This agreement may be terminated by either the County or the Town on sixty (60) days written notice. In the event the Town shall desire to terminate this agreement, said written notice shall be delivered to the Clerk of the Board of county Commissioners, and in the event the County shall desire to terminate this agreement, said written notice shall be delivered to the Clerk of the Town of Yacolt.

DATED this 22<sup>nd</sup> day of October 1996.

BOARD OF COUNTY COMMISSIONERS  
CLARK COUNTY, WASHINGTON

BY: [Signature]

Chairperson

ATTEST:

[Signature]  
Clerk of the Board

[Signature]  
Town Clerk

[Signature]  
Mayor

APPROVED AS TO FORM ONLY this 4<sup>th</sup> day of December 1996.

[Signature], Town Attorney

APPROVED AS TO FORM ONLY this 22<sup>d</sup> day of October 1996.

[Signature], Deputy Prosecuting Attorney.

[FM/SA [h:\CONTRACT\YACOLT96.AGR]

INTERLOCAL AGREEMENT TO PROVIDE  
SERVICES AS FIRE MARSHAL

THIS AGREEMENT IS MADE AND ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2008, by and between the COUNTY OF CLARK, a municipal corporation, hereinafter referred to as "County," and Clark County Fire District # 13, a municipal corporation organized under the laws of the State of Washington, hereinafter referred to as "District," and the Town of Yacolt, hereinafter referred to as the "Town."

**WITNESSETH:**

**WHEREAS**, the County, the Town and the District are desirous of entering into a mutual agreement wherein the County can provide certain services through its Fire Prevention Bureau of Clark County for the Town; and,

**WHEREAS**, both the Town and the County have adopted the International Fire Code (2006 edition), and said International Fire Code is directly applied in specific occupancies within both the Town and the County; and,

**WHEREAS**, the operation and application of said International Fire Code has achieved a successful program based on orderly and sound fire-safety principals which have inured themselves to the citizens of the County; and,

**WHEREAS**, the District desires to provide a similarly successful program for orderly and sound fire-safety principals with respect to specific occupancies within the incorporated limits of the Town; and,

**WHEREAS**, the purpose of this agreement is to fulfill certain powers and authorities which are attributable to the District, the Town and the County and is a proper subject for an agreement under RCW 39.34 providing for cooperation between government entities,

**NOW THEREFORE**, it is mutually agreed as follows:

1. **SERVICES TO BE RENDERED:** The Fire Prevention Bureau of Clark County shall provide the enforcement and interpretation of building and fire codes as they pertain to fire protection and hazardous materials as adopted by the Town and any other codes pertaining to fire safety adopted by the Town. Said services shall include:
  - A. **Existing Occupancies:** Inspection of commercial occupancies and structures containing commercial occupancies. Said inspections will be conducted upon a mutually agreed schedule between the District and the County. Other inspections may be scheduled as necessary thereafter to ensure compliance and, as requested by the District Fire Chief, to strive for compliance with the fire protection and hazardous materials codes and ordinances adopted by the Town. Any inspections other than annual inspections shall be preapproved by the District Fire Chief. The District Fire Chief shall establish a list of



occupancies to be inspected under this agreement and the total amount of time to be allocated to such inspections. Any inspections in addition to those requested or which exceed the time allotted for inspections shall not be reimbursed by the Town to the County.

- B. **Fire Cause Determination Investigations:** Investigations necessary to determine the origin and cause of fires occurring within the Town when requested to do so by the District Fire Chief.
- C. **Incendiary Fire Investigation:** Technical assistance and assistance in conducting investigations of incendiary or suspected incendiary fires when requested to do so by the District Fire Chief.
- D. **COMPENSATION:** The Town shall pay the County for the above services as follows:
  - i. **Existing Occupancy Inspection.** For occupancy inspections, the County shall be compensated at the rate of \$43.00 per hour of work performed. All inspection shall be conducted during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday).
  - ii. **Origin and Cause Fire Investigation.** For fire cause investigations, the County shall be compensated at the rate of \$60.00 per hour for work performed during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday) and \$70.00 per hour for work performed outside of normal County work hours (after 5:00 p.m. and before 8:00 a.m., Monday through Friday and all day Saturday and Sunday).
  - iii. **Incendiary Fire Investigation.** For incendiary fire inspection, the County shall be compensated at the rate of \$60.00 per hour for work performed during normal County work hours (8:00 a.m. to 5:00 p.m., Monday through Friday) and \$70.00 per hour for work performed outside of normal County work hours (after 5:00 p.m. and before 8:00 a.m., Monday through Friday and all day Saturday and Sunday).

- 2. **METHOD OF PAYMENT:** The Town will pay charges for services rendered under the terms of this agreement within thirty (30) days of receipt of an invoice for services. The Town reserves the right to pass on the fees to the business or property owner of the buildings for which services have been provided under the terms of this agreement, and the Town may charge an additional sum for administrative fees in addition to the fee charged by the County.
- 3. **COMPLIANCE LITIGATION:** Any or all lawsuits originating with or initiated by the Town with respect the enforcing or ensuring compliance with the International Fire Code shall be the responsibility and at the sole expense of the Town through its appropriate officials.

4. **COVERAGE IN THE EVENT OF CLAIM OR SUIT:** The Town hereby contracts and agrees that the Town's current insurance coverage through the Association of Washington Cities will provide coverage to the County, the District and their respective elected officials, officers, employees, and agents. The Town's insurance will defend the County and the District, their respective elected officials, officers, employees, and agents from and against all liability, loss, damage, expense, action, and claims incurred by the County and the District or their respective elected officials, officers, employees, and agent in the defense thereof, arising directly or indirectly from the acts of those elected officials, officers, employees, and agents acting in good faith and within the scope of their duties under this agreement. Fifteen days prior to any change in the Town's currently existing insurance coverage, the Town will notify the District and County of this event and give the District and County the option of amending or terminating this agreement.
5. **APPEALS:** Appeals regarding the interpretation of or the suitability of alternate methods or materials to specific provisions of the International Fire Code shall be in accordance with the Yacolt Municipal Code section 15.10.130.
6. **TERMINATION:** This agreement may be terminated by the County, The Town or the District on sixty (60) days written notice. In the event the District shall desire to terminate this agreement, said written notice shall be delivered to the Clerk of the Board of County Commissioners and the Clerk of the Town of Yacolt. In the event the County shall desire to terminate this agreement, said written notice shall be delivered to the Secretary of Clark County Fire District # 13 and the Clerk of the Town of Yacolt. In the event the Town shall desire to terminate this agreement, said written notice shall be delivered to the Clerk of the Board of County Commissioners and the Secretary of Clark County Fire District # 13.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

BOARD OF COUNTY COMMISSIONERS  
CLARK COUNTY, WASHINGTON

BY:

\_\_\_\_\_  
Chairperson  
\_\_\_\_\_  
\_\_\_\_\_



## Town of Yacolt Request for Council Action

### CONTACT INFORMATION FOR PERSON/GROUP/DEPARTMENT REQUESTING COUNCIL ACTION:

**Name:** Mayor Listek

**Group Name:**

**Address:** 202 W. Cushman  
Yacolt, WA 98675

**Phone:** 360-686-3922

**Email Address:** mayorlistek@townofyacolt.com

**Alt. Phone:**

### ITEM INFORMATION:

**Item Title:** Security Cameras

**Proposed Meeting Date:** September 13, 2021

**Action Requested of Council:** Discuss approval for negotiating on and purchasing a security camera system for key areas in town

**Proposed Motion:** "I move that we allow the Mayor to negotiate for, select, and purchase a security camera system for each of the following areas: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_."

**Summary/ Background:** The Town has continued to be plagued with vandalism at our parks and common areas – even at Town Hall. The camera systems we have in place do almost no good as far as capturing the culprits, due to poor images. We would like to install cameras that not only give high-resolution, clear images, but also real-time notifications that something is going on, so that potential damage may be averted. There are now many systems which would provide this for us. The Mayor has been researching prices and quality ratings. At the time of this writing, the scanner at Town Hall is under repair. Once repaired, price sheets will be scanned and uploaded to this meeting packet. They will also be available at Town Hall for inspection.

**Staff Contact(s):** Clerk Stephanie Fields

[clerk@townofyacolt.com](mailto:clerk@townofyacolt.com)

Mayor Katelyn Listek

[mayorlistek@townofyacolt.com](mailto:mayorlistek@townofyacolt.com)

(360) 686-3922