

RESOLUTION NO. 1176

A RESOLUTION OF THE CITY OF CAMAS,  
WASHINGTON adopting findings for Hancock Springs  
Subdivision, SUB 05-03, reference application of the City's Tree  
Ordinance.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAMAS AS FOLLOWS:

I

The Council makes the following findings with respect to the issue presented on remand for the Washington State Court of Appeals reference Hancock Spring Subdivision, SUB 05-03:

- A. Private Capital LLC, filed an application on February 9, 2005 to subdivide approximately 7.9 acres of real property into single family residential lots.
- B. By Resolution No. 1044 the Council of the City of Camas approved the recommendation of the Planning Commission, including the conditions of approval set forth therein, and the preliminary plat application subject to such conditions.
- C. The Council of the City of Camas further denied the SEPA Appeal of Charles and Billye Gayle Lawrence by Resolution No. 1044.
- D. This matter was subject to a LUPA Appeal to the Clark County Superior Court by Charles and Billye Gayle Lawrence. Judge Barbara Johnson of the Clark County Superior Court denied the claims of Charles and Billye Gayle Lawrence and the matter was appealed to the Washington State Court of Appeals.
- E. On all substantive and procedural issues, with the following set forth exception, the Court of Appeals ruled in favor of the Appellants, including the City of Camas. In reference to the application of Camas Municipal Code 17.19.030(a)(2) the Court of Appeals remanded the matter to the City of Camas to determine whether the application had made reasonable effort, without exception, to keep significant existing trees safe from harm or destruction.
- F. The Planning Commission held a hearing on this limited issue on September 16, 2008 and on October 7, 2008. The Planning Commission recommended approval to the City Council of the proposal.
- G. On November 17, 2008 the City of Camas City Council approved the application reference the limited issue on remand.

H. As a supplement to the above set forth findings the Council of the City of Camas adopts the Findings of Facts set forth in Exhibit "A", attached hereto and by this reference incorporated herein.

II


Based upon the foregoing findings, Council makes the following decision:

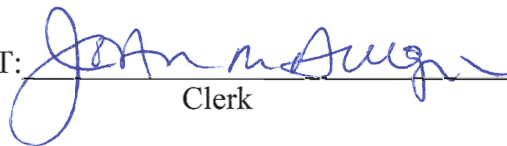
A. The recommendation of the Planning Commission reference the issue of whether the applicant undertook reasonable efforts to preserve existing significant trees is hereby approved.

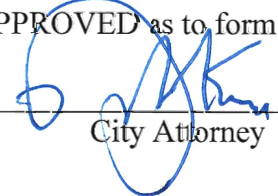
B. The Council of the City of Camas further adopts the Conclusions of Law as set forth in Exhibit "A", attached hereto and by this reference incorporated herein

III

ADOPTED BY THE COUNCIL AT A REGULAR MEETING this 6<sup>th</sup> day of April, 2009.

SIGNED:   
Mayor

ATTEST:   
Clerk

APPROVED as to form:  
  
City Attorney

Findings of Fact and Conclusions of Law  
Hancock Springs Subdivision (SUB 05-03)

A. Summary of Procedural History

1. The applicant requests approval to divide approximately 7.9 acres zoned R-10 and R-12 into fourteen lots and open space/stormwater tracts. The site is located at 2706 NW 18<sup>th</sup> Avenue Camas, Washington 98607; also know as Tax Parcels 127375-000, 127377-000, 127379-000 and 127414-000, (the "site").
2. The applicant filed for a sixteen lot subdivision in March 2005. Camas City Council approved a fourteen lot subdivision on January 17, 2006 and findings to support the decision were adopted by Resolution #1044 on March 6, 2006. Charles and Billye Gaye Lawrence filed a LUPA appeal with the Superior Court of Clark County, in which the Superior Court judge ruled in favor of the City of Camas and the applicant on every issue. Charles and Billye Gaye Lawrence filed an appeal to the Washington Court of Appeals, Division Two alleging several errors. The Court of Appeals remanded the subdivision approval back to City of Camas on a single issue. All prior issues are deemed to be decided by the Court of Appeals and in favor of the City of Camas and applicant.
3. The court remanded the matter for a hearing on the applicant's reasonable efforts to preserve existing significant trees. See Court of Appeals unpublished opinion page 16.
4. Upon remand the applicant supplied a summary of previously submitted plans and provided additional evidence consisting of a new proposed layout consisting of reduced building envelopes to protect four trees in moderate to good health, a new tree report, a letter from the project engineer and numerous legal arguments from the applicant's attorney. Staff evaluated the new and previously submitted evidence and deemed that the applicant's plans complied with the Camas Municipal Code and issued a new staff report dated September 9, 2008.
5. The Planning Commission held hearings on September 16, 2008 and October 7, 2008 to ascertain whether or not the applicant undertook reasonable efforts to preserve existing significant trees. The Planning Commission recommended approval to the City Council of the applicant's proposal and concluded that the applicant had met its burden of proof.
6. On November 17, 2008 the City of Camas City Council approved the subdivision on a vote of six to one. And now makes the findings consistent with the evidence in the record.

B. Hearing Summary and Highlights

1. At the September 16, 2008 and October 7, 2008 the Planning Commission received testimony. All exhibits and records of testimony are at the City of Camas. At the beginning of the hearing the City Attorney described how the hearing would be conducted and informed the Planning Commission that this matter was on remand from the Court of Appeals and was to be limited to a discussion of the applicant's reasonable efforts to preserve existing significant trees. The City Attorney asked the Planning Commission to declare any ex parte contact, bias or

conflicts of interest. None were stated and the applicant or opposing counsel did not raise any objections.

2. Attorney, James Howsley testified on behalf of the applicants. He reminded the Planning Commission that the subdivision despite being up on appeal on several issues is limited to one single issue whether the applicant conducted undertook reasonable efforts to preserve existing significant trees. He stated that the Court of Appeals held that Private Capital failed to comply with CMC 17.19.030.

Mr. Howsley contended that the court based its decision strictly on the city's council's findings that mitigation such replanting was the same as preservation. And he stated that there were alternative layouts considered when developing the plan that went up on appeal. Specifically, staff and the applicant discussed several layouts for months related to the location of the road accessing the site and the potential impacts to critical areas. But that the findings did not explicitly set forth all of the layouts that were considered to fulfill all of the requirements of the code.

A. He argued that the Court emphasized that the Lawrences glossed over the term reasonable in their analysis of the case.

i. Mr. Howsley stated that the correspondence, dated September 16, 2008 and October 7, 2008 presented a detailed discussion of how the applicant viewed the Court's reasonable efforts standard.

ii. He argued that the applicant had proposed several alternative layouts. And that for various reasons including impacts to other critical areas, impacts to trees, impacts to neighboring property owners, engineering and grading considerations and compliance with all aspects of the Camas Municipal Code that the applicant went above and beyond in trying to preserve existing healthy significant trees.

iii. Mr. Howsley went on to state that all of these considerations are for the Planning Commission as the recommending body and eventually the City Council as the ultimate finder of facts to discuss and discern whether substantial evidence in the record supports the request.

iv. He cautioned the Planning Commission that the Court explicitly warned the City that the "...city council cannot require applicants to make unreasonable efforts to protect trees." But he stated the court suggested the following considerations.

- a. Alternative designs;
- b. Smaller building envelopes;

c. And that while the original tree report cited specific reasons to remove existing trees such as invasive species, structural defects and health deterioration or ice damage, that the original tree report did not go far enough in evaluating the health of individual trees on site.

d. And the Court stated that the applicant made design its first consideration and trees secondary.

e. He stated the applicant believed that all of the new evidence and evaluation merited a recommendation of approval as submitted.

B. He stated that Private Capital conducted a subsequent refinement of the Hancock Springs Plan and that the letter his office submitted on August 28, 2008 detailed what the applicant did in evaluating the proposed layout in light of the courts ruling

i. He argued that the findings in the original approval by the City Council did not reflect all of the work that was involved in arriving at the layout for the site.

a. Specifically the applicant fought to maintain larger zoning on the property. The City looked at zoning the property R1-6 or R1-7.5 and Private Capital believed that this was inconsistent with the surrounding properties. And that City Council considered this during the comprehensive plan update and that council adopted larger lot zoning in Camas so that larger houses would be built. Larger houses necessitate larger building envelopes and to reduce building envelopes unreasonably would frustrate the purpose of larger lot zoning.

b. Private Capital also went through a lengthy discussion with the City as to the proposed location of the road along the western boundary. A half road on the western boundary could have impacted Mr. Lawrence's property more dramatically than having lots there.

c. Private Capital also fought a proposed stub road to the west that could have impacted Mr. Lawrence's property

d. Private Capital examined numerous layouts for their impact on wetlands, habitat areas, neighboring properties and trees

e. And as a result of these, the applicant reduced its proposal from sixteen to fourteen lots

ii. He stated that after the remand- Private Capital undertook additional studies and evaluation of the site, specifically paying attention to the trees

a. Private Capital hired Walt Knapp and Morgan Holen to conduct another tree survey of the property and make recommendations based on health of the trees.

(1) The new tree report looked at trees in terms of whether they were invasive, had disease, or showed signs of damage due to weather or other conditions.

(2) This analysis was a tree by tree analysis and recommendation.

(3) The report was then used in conjunction with the engineering report to make a recommendation

b. And Andrew Gunther, the new civil engineer with PLS engineering who evaluated the property for engineering considerations, including

(4) Reviewing previous plans

(5) Evaluating the site's proposed road configuration and alternatives

(6) And in conjunction with Mr. Knapp and Ms. Holen's work evaluating which healthy significant trees could be saved through tweaks to the building envelopes.

(7) Evaluating the topography of the site

(8) Evaluating the grading challenges of the site

c. And he argued that Private Capital evaluated all of this additional work under the framework that is given by the Growth Management, Camas Comprehensive Plan, Clark County Comprehensive Plan and Camas Municipal Code

(a) He stated that in the October 7, 2008 letter to the Planning Commission Private Capital set forth in detail the legal argument including the Jones v. King County Case

(b) Which provided that zoning codes are to be construed to ensure that each part is given effect with every other party.

(c) And that the Court even pointed this line of reasoning out when it cited to the Dep't of Ecology v. Campbell & Gwinn LLC

C. Finally he concluded that all of the additional work culminated in the proposal that is before council whereby

1. Private Capital agreed to reduce the building envelopes on three lots to save four specific trees 1505, 2506, 2507 and 2615
2. And the applicant met its burden of proof in terms of facts and law in regards to this case through all of the evidence and argument submitted.

3. Mr. Walt Knapp and Ms. Holen testified on behalf of the applicant explaining the methodology and specific findings in the new arborist report.

4. Mr. Gunther, PLS Engineering testified as to his letter dated August 29, 2008 in which he stated his professional opinion as an engineer to some of the site's limitations for development, grading and overall engineering feasibility.

5. Mr. Karpinski, attorney for the Lawrences, raised his objections to the proposal. He introduced written argument and diagrams. He cross examined Mr. Knapp, Ms. Holen and Mr. Gunther. And he argued that CMC 17.19.030(A)(2) is an avoidance standard.

A. Mr. Karpinski asserted the following:

- i. The new plan calls for the removal of 119 of 123 "significant trees".
- ii. The grading plan which was provided focused on road layout/safety issues.

B. He stated that the applicant must do the following to avoid impacts to trees:

- i. Reduce building envelopes.
- ii. Modify grading.
- iii. Reduce lots.

iv. Do alternative designs like a planned residential development in order to avoid impacts to trees.

C. He stated that the Court of Appeals rejected "protection" as a standard. He argued that the applicant's arborist report admits that trees on the site were not a short term hazard and that the reason so many trees were classified as poor was due to "overcrowding" or being "overstocked."

D. Mr. Karpinski argued that the applicant returned with a plan that actually impacted more trees. He introduced a letter from Mr. Peter Torres. Mr. Torres did not avail himself at the hearing to questioning by the applicant.

E. Mr. Karpinski presented to City Council some designs that the Applicant "should have considered, but did not." Karpinski Memo to Council, page 3. Karpinski noted that "It is not our job to come up with alternative designs...it is the Applicant's." Karpinski came up with 2 alternative designs "in about 15 minutes" to protect the site's trees. While acknowledging some elements of one of these designs are "not perfect", Karpinski claims these designs "seem like a feasible alternative that was not considered." This included reducing building envelopes on the site to the 1600 sq ft. minimum.

F. Mr. Karpinski argued that the applicant's alternative layouts were from the previous application and not reevaluated after the remand from the Court of Appeals.

G. Mr. Karpinski also provided a layout demonstrating how the trees could be preserved on site through reducing the lot averages, layout reconfiguration, density transfer, negotiated preservation or variances to the project. These were introduced as Lawrence Diagram 1 and 2.

H. Mr. Karpinski presented several Camas Comprehensive Plan provisions that he believes supports protecting more trees here.

6. Mr. Howsley returned and responded to Mr. Karpinski's arguments. Stating that Mr. Karpinski keeps ignoring the term reasonable and the code needs to be read in entirety not to fulfill the intent.

7. The Planning Commission deliberated and recommended approval to the City Council.

8. On November 17, 2008, Camas City Council held a meeting to discuss the matter and render a decision.

9. Mr. Howsley argued first, arguing similar points that were raised in the Planning Commission hearing. He did raise a point of law related to Mr. Karpinski's contention that a planned residential development could be used. He stated that CMC 18.23.030(B) mandates that there is a ten acre minimum to use a planned residential development and that Hancock Springs is too small at 7.9 acres. He also argued that to reduce building envelopes to such a small size would frustrate the purpose of having larger lot zoning where you are trying to allow for a mix of housing types including larger homes.

10. Mr. Karpinski argued similar points that were raised in the Planning Commission hearing and was again afforded an opportunity to question the applicant's experts when they answered direct questions from council.

11. Mayor Dennis closed argument and returned the matter for council deliberations and decision.

### C. Findings

Based upon the evidence presented, the City Council of the City of Camas makes the following findings of fact:



1. The applicant provided alternative layouts throughout the course of the application.
2. The various layouts which were rejected by the City Council created conditions impacting the property, surrounding properties, critical areas and trees in a manner deemed to be demonstrably negative as compared to the approved layout.
3. The building envelopes on three lots were reduced to save four specific trees, namely numbers 1505, 2506, 2507 and 2615.

Based upon the above set forth findings of fact and conclusion of law, the City Council of the City of Camas makes the conclusions of law:

1. The zoning code of the City of Camas should be construed so that each part is given effect with every other part and that each provision of our code is harmoniously construed in relation to others.
2. That the approved layout meets all applicable City code standards and objectives of the City of Camas Comprehensive Plan.
3. That the applicant has made reasonable efforts, without exception, to keep significant existing trees safe from harm or destruction and that the applicant has complied with CMC 17.19.030(A)(2).
4. Except as specifically set forth herein, the application as previously approved by the City Council shall remain in full force and effect.