

RESOLUTION NO. 1147

A RESOLUTION OF THE CITY OF CAMAS, WASHINGTON
adopting Findings of Fact and Conclusions of Law reference SEPA
Appeal of Lake Hills PRD.

WHEREAS, the City of Camas issued a SEPA Determination reference Lake Hills Planned Residential Development on August 19, 2008; and

WHEREAS, the applicant timely filed an Appeal of the SEPA Determination; and

WHEREAS, the City Council held a hearing as required on February 17, 2009 reference said SEPA Appeal; and

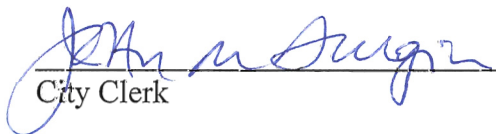
WHEREAS, having reviewed the evidence presented therein and being otherwise fully advised in the premises, the City Council of the City of Camas voted to deny the SEPA Appeal.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMAS, STATE OF WASHINGTON, as follows:

1. The SEPA Appeal of the applicant reference the Lake Hills Planned Residential Development is hereby denied.
2. The City Council hereby adopts the Findings, Conclusions and Decision attached hereto as Exhibit "A".

ADOPTED this 15th day of April, 2009.

Attest:



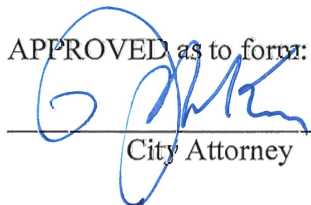
City Clerk

CITY COUNCIL OF THE CITY OF CAMAS,
STATE OF WASHINGTON

By: 

Paul Dennis, Mayor

APPROVED as to form:



City Attorney

BEFORE THE CITY COUNCIL
FOR THE CITY OF CAMAS

In the Matter of the Appeal of:

LAKE HILLS PRD

Of a SEPA Determination of Significance
Issued August 19, 2008

NO. SEPA 08-10
Lake Hills PRD

FINDINGS, CONCLUSIONS, AND
DECISION

SUMMARY OF DECISION

The appeal of the August 19, 2008 Determination of Significance issued for the Lake Hills PRD is DENIED.

SUMMARY OF RECORD

Procedural History:

December 19, 2005 - Lake Hills PRD filed a Type III Land Development Application and requested Optional Consolidated Permit Processing (CMC18.55.020-B) for a planned residential development. On January 11, 2006, the Applicant was provided a response by City of Camas staff providing a list of items that were missing from the application and other project concerns.

March 14, 2006 - Lake Hills PRD provided the City of Camas with a second submittal, which was responded to by City staff on April 3, 2006. Following that response, City staff met with the Applicant on May 16, 2006 to discuss a number of code compliance issues, to include geotechnical, archeological wetlands impacts, recreational open space, etc.

July 13, 2006 - The Applicant filed a third submission, which the City staff responded to by way of a meeting held July 27, 2006. Specifically addressed during the meeting was code compliance, as previously mentioned in the first letter and meeting, in such areas as intersection spacing, geotechnical concerns, archeological concerns, wetlands impacts, lot sizes, recreational open space, onsite parking, and sales office locations.

October 23, 2006 - The Applicant provided their fourth submittal to City staff. On November 8, 2006, City staff met with the Applicant, DOE, and COE on site to inspect the wetlands. During this site visit, additional wetlands were discovered. DOE required Applicant to revise their wetlands reports. At that time, there were development issues remaining, to include geotechnical concerns, archeological concerns, wetlands impacts, lot sizes, recreational open space and onsite parking.

February 21, 2007 - The Applicant provided City staff with their fifth submission and on March 13, 2007, were provided notice that City staff would request comments from state agencies.

April 9, 2007 - City staff received a technical memo from JD White, which was provided to Applicant.

June 1, 2007 - The City indicated to the Applicant that a determination of significance hereinafter referred to as "DS" is likely pursuant to WAC 197-11-350.

June 29, 2007 - City staff met with Applicant to discuss SEPA issues.

April 7, 2008 - The Applicant provided their sixth, and most current, submission, which was responded to by way of a July 24, 2008 Technical Memorandum from JD White.

August 19, 2008 - The City of Camas acting as the lead agency for the State Environmental Policy Act review of environment impacts caused by this proposal issued a (DS).

August 25, 2008 - An appeal of this determination was filed by Arthur C. Piculell Jr. and Martin C. Peets, principals of Homesite LLC, developers of Lake Hills PRD. A public hearing to consider the appeal was scheduled before the City of Camas Council on October 20, 2008, and at the request of the Applicant, the hearing was canceled. An attempt was made to reschedule the hearing for December 15, 2008 by the City of Camas and asked for confirmation from the Applicant by November 14, 2008. Counsel for the Applicants responded that they were placing a hold on any further proceedings dealing with Homesite LLC's Lake Hills Development. The City responded by way of a letter dated December 9, 2008 that the City wished to proceed to establish a firm date for hearing the appeal and to establish a briefing schedule in this matter. The Applicant was informed that a hearing on the appeal would be heard February 17, 2009 at 4:00 p.m. and requested the Applicant provide any documents they wished to be considered at the appeal to be submitted no later than February 2, 2009. Furthermore, the City indicated that responsive materials and legal memoranda would be provided by the City no later than February 10, 2009. The Applicant complied with this request and an appeal hearing was conducted February 17, 2009.

As part of the Applicant's appeal of the determination of significance issued August 19, 2008, they appealed staff decisions and specifically requested that the City Council affirm two policy decisions alleged to have been made previously, 1) Buffer averaging for wetlands located on the proposed development site; and 2) Offsite mitigation for wetlands disturbance for the proposed development site.

Hearing Date:

An open record hearing on the appeal was held before the Camas City Council on February 17, 2009. The record was closed that same evening.

Testimony:

At the appeal hearing, the following individuals presented testimony under oath:

City of Camas

1. Sarah Fox, City Staff
2. Monte Brachmann, City Staff
3. Brian Bieger, JD White
4. Mark Cline, Department of Ecology
5. Ted Labbe, WDFW
6. Stu Albright, Ash Creek Associates

Applicant, Lake Hills PRD

7. Martin Peets, Principal, Homesite LLC
8. Bill Horning, Western Planning Associates, Inc.
9. George Freitag, GRI
10. Kevin Grosz, The Resource Company

Legal Counsel

1. Attorney Mike Simon, on behalf of the Applicant, Homesite LLC and Martin Peets
2. Attorney Shawn MacPherson, on behalf of City Staff
3. Attorney Chris Sundstrom, on behalf of the City of Camas

Exhibits:

At the appeal hearing the following exhibits were admitted into the official record by way of stipulation by City Staff, the Applicant, and their attorneys of record:

- ▶ City of Camas provided a CD that contained the entire public record of approximately 1400 pages, scanned and indexed; a handout of a Powerpoint presentation; all of which were reviewed during the hearing and further referenced as File No. SUB 05-15.
- ▶ Three public records requests entered into the record during the hearing, two of which are standard forms and another referenced in a Post-it Note dated August 12, 2008.
- ▶ Submission of Mike Simon dated February 2, 2009 (letter referencing the Applicants perspective of the controversy, inconsistent positions, Lake Hills legal position, to include legal analysis, discussion of the City's obligations under Camas Municipal Code 16.12.060 and submissions of documents by the Applicant and the City referenced as Exhibits 1 through 15)

Based upon the testimony and evidence admitted at the open record hearing, the Camas City Council enters the following Findings and Conclusions:

FINDINGS

1. On December 20, 2005, the Applicant filed a consolidated Type III Land Development Application for a residential development, herein referred to as Lake Hills Residential Development, included in that application was an Environmental Checklist filed by the Applicant. An Environmental Checklist was filed by the Applicant with each subsequent submission to the City. City staff generated a letter on January 11, 2006 detailing the incompleteness of the application. On March 14, 2006, the Applicant, through Western Planning, submitted a second submission dated March 14, 2006. On March 16, 2006, City staff received a preliminary geotechnical evaluation prepared by George Freitag dated December 30, 2005. On April 3, 2006, Sarah Fox, forwarded a letter to Homesite Development, LLC requesting clarification on the application and requesting additional information. The record indicates that the application was deemed complete as of March 14, 2006. (CD/2006/E.pdf/pg. 3). The record also shows that the applicant submitted five more plat drawings, as well as other studies and submittals in the proceeding two years separate and apart from the revised narrative/plat.
2. There is no dispute that the Camas Municipal Code (herein referred to as "CMC") in effect for 2006 was the applicable code provision insofar as this project was vested under that code.
3. The project, as depicted in the current proposal of the Applicant dated April 7, 2008, provides for 80 residential lots located on 25 acres between NW Lake Road, NW Walden Drive, and Michaelbrook Lane, in Camas, Washington. The property is zoned R10.
4. Pursuant to RCW 43.21c (commonly referred to as the State Environmental Policy Act [SEPA]), the City of Camas is designated the lead agency for review of environmental impacts caused by the proposal. On March 13, 2007, the City circulated an Environmental Checklist to various agencies for comment. Several comment letters were received during the comment period, which are entered herein on the record as stipulated exhibits. Based upon the input received during the comment period, the City requested the Applicant to change the proposal to reduce the probable adverse environmental impacts identified during the review process. The Applicant did not make the changes to the proposal. The City issued a Determination of Significance (herein referred to as "DS") on August 19, 2008 to Lake Hills PRD. The DS contains the following combination of environmental concerns:
 - a. Wetlands under CMC 18.31.050
 - b. Steep slopes under CMC 16.90.020
 - c. Trees under CMC 18.31.080

5. The Applicant filed an appeal of the Determination of Significance on August 25, 2008. The appeal was timely under the fourteen-day appeal deadline and Camas Municipal Code 18.55.165. The appeal alleged the following issues as contained in the document filed on behalf of the Applicant dated February 2, 2009 by the Applicant's attorney of record, Mike Simon:
 - a. Confusion and inconsistencies resulting from staff policy decisions disallowing buffer averaging for wetlands located on the site
 - b. Denying offsite mitigation for wetlands disturbance on the site
 - c. Failing to identify probable adverse significant impacts from the proposal
 - d. City staff's rejection of the tree survey, to include the Tree Preservation Plan, as proposed by the Applicant

Findings Related to Impacts

6. Wetlands. Under the current proposal, as submitted by the Applicant, it is not disputed that the wetland buffers do not comply with the applicable City code. Further, the application does not provide for an analysis of the functions of the seven wetlands and associated buffers, nor does the application avoid or minimize the impacts to the buffers and the wetlands. The Applicant has countered that they should be allowed buffer averaging for this site, arguing, in part, that buffer averaging was allowed for other sites. This argument was rejected by council as not relevant to the application of the City code to this particular proposed development site.
7. Slopes. The proposed application notes slopes that are steeper than 15% (fifteen percent) and thus regulated under CMC 16.90. The application does not avoid or minimize impacts to steep slopes, especially concerning the combined concerns with significant trees and the proximity of the wetland areas. The Applicant argues that there is a difference of opinion between the two geotechnical firms hired by the City staff or the Applicant to conduct an analysis of the slopes and their stability. The council finds that the Applicant has not properly addressed the issue of slope stability or avoidance.
8. Trees. The current proposal by the Applicant contemplates the proposed removal of 1,774 (one thousand seven hundred and seventy four) significant trees as defined under CMC 18.31. Staff has identified that 453 (four hundred fifty three) of those significant trees would be removed from steep slopes. The Applicant has provided no analysis of tree preservation by a qualified biologist pursuant to CMC 18.31.080.

Findings regarding Applicant Confusion

9. The Applicant spent a significant portion of their testimony alleging confusion on their behalf by correspondence and materials submitted by City staff and claimed City staff issued, from their perspective, three Mitigated Determinations of Nonsignificance (herein referred to as "MDNS"), one of which is referred to specifically in the Applicant's briefing packet alleging that on May 29, 2007, a Mitigated Determination of Nonsignificance was issued. The Camas City Council finds that this alleged MDNS

issued on May 29, 2007 was not, in fact, a threshold determination, but rather an unsigned document located within the City file and obtained by the Applicant by way of a Public Records Request. The Camas City Council further finds that there was no confusion on the part of the Applicant regarding the position of City staff. The Applicant, as part of their request, argued and requested that the City Council, as the body hearing the appeal, order City staff to issue a MDNS. The City Council finds that this request is inappropriate. The authority of City Council in hearing this appeal is limited insofar as they can either affirm the threshold determination issued by the City staff or reject the threshold determination and send the matter back to City staff for further review and analysis.

CONCLUSIONS

Jurisdiction:

The Camas City Council has jurisdiction to hear and decide appeals of SEPA threshold determinations pursuant to 16.28.060 of the Camas Municipal Code.

Criteria and Standards for Review:

SEPA Appeal

The State Environmental Policy Act (Chapter 43.21C RCW or "SEPA") specifies the environmental review procedures the City must follow for proposals that may have an impact on the environment. One purpose of the act is to "insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations." Every proposal that may impact the environment (unless it is exempt from the act) must undergo some type of environmental review. RCW 43.21C.030 (b).

The SEPA threshold determination is a determination as to whether a proposal is "likely to have a probable significant adverse environmental impact." WAC 197-11-330. If the responsible official determines that a proposal will not have a probable, significant adverse environmental impact then a Determination of Nonsignificance (DNS) is issued. If the responsible official determines that a proposal *will* have a probable, significant adverse environmental impact then a Determination of Significance (DS) is issued and an Environmental Impact Statement (EIS) must be prepared. An MDNS may be issued to mitigate identified probable significant adverse environmental impacts so that an EIS need not be prepared. WAC 197-11-350.

"Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental policy. Significance involves context and intensity and does not lend itself to a formula or a quantifiable test. WAC 197-11-794. Several marginal impacts when considered together may result in a significant adverse impact. WAC 197-11-330(3)(c).

"Probable" as used in SEPA means likely or reasonably likely to occur. Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote

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or speculative. WAC 197-111-782. A potential impact can be considered speculative if the complaining party does not provide evidence of the impact. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720 (2002).

In order for the threshold determination to be upheld, the lead agency must demonstrate that it actually considered relevant environmental factors before reaching the decision. The relevant environmental facts are those set forth in WAC 197-11-444. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718 (2002). The lead agency must make its threshold determination "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." WAC 197-11-335.

In deciding whether to require an EIS, the lead agency must consider mitigation measures that the agency or Applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws. WAC 197-11-330(1)(c). The lead agency's reliance on existing laws and plans to mitigate some of the environmental impacts of a project need not be disclosed in the MDNS. *Moss v. City of Bellingham*, 109 Wn. App. 6, 21-23 (2001).

The standard for review applicable to procedural decisions under SEPA is arbitrary and capricious or contrary to law. *Short v. Clallam County*, 22 Wn. App. 825, 830, 593 P.2d 821 (1979).

The burden of proof is on the Appellant to show that the proposal will not have probable, significant adverse environmental impacts. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002).

Conclusions Based on Findings

SEPA Appeal

1. The SEPA Responsible Official considered the relevant and cumulative environmental factors prior to the issuance of the SEPA threshold determination, and based the DS on information reasonably sufficient to evaluate the combined environmental impacts of the proposal:
 - a. The proposal does not provide for lawful or adequate wetland buffers
 - b. The proposal presents risks inherent to unstable slopes
 - c. The proposal presents risks from the removal of significant trees
2. The Applicant failed to meet their burden that the proposed project is unlikely to present significant, adverse environmental impacts, which cannot be reasonably mitigated. Once again, the proposed development does not conform to Camas Municipal codes to avoid or minimize impacts to environmentally sensitive areas. The Applicant has failed to adequately address the inherent risks associated by steep slopes and the resulting steep slope instability, and the adjacent wetland areas. The Applicant has not addressed the environmental impacts of their proposed tree removal and the fact that the trees are considered "significant trees" 453 of which are located on steep slopes as defined by CMC 16.90. Further, the Applicant has not provided any analysis of tree preservation by a qualified biologist as required by CMC 18.31.080. The City

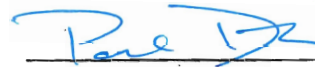
Council concludes there was no confusion. The City Council concludes that the Applicant decided that City staffs' position was unreasonable and therefore they did not need to address the concerns upon which the City staff based their DS.

3. The Applicant's request that the City Council require City Staff to issue a MDNS is rejected. City Council concludes that the only authority they have as the hearing body for this appeal is to affirm or reverse the DS determination made by the SEPA Responsible Official.
4. Applicant has failed to prove that the City made any clear error while conducting the SEPA review for the project. The SEPA Responsible Official's DS is based upon the determination that the proposed development of the site by the Applicant is likely to present significant adverse environmental impacts which cannot be reasonably mitigated.

DECISION

Based upon the findings and conclusions, the appeal of the August 19, 2008 Determination of Significance issued by the City of Camas as the lead agency for the Lake Hills PRD Project is denied and the City's Determination of Significance made by the SEPA Responsible Official is affirmed.

DECIDED this 17th day of February 2009.



Honorable Paul Dennis, Mayor
City of Camas