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November 1, 2019

Lauren Hollenbeck
Senior Planner
City of Camas
616 NE 4th Ave.
Camas, WA 98607

Re: Haley Short Plat

Dear Lauren:

We represent the Applicant and property owner of the proposed Haley Short Plat. We are submitting this letter in response to the two letters submitted by a group of neighbors and project opponents dated October 8, 2019 and August 5, 2019. The October 8, 2019 letter raises a number of issues related to several old covenants and plat notes recorded against the property. The August 5, 2019 letter raises issues with respect to road maintenance, conservation areas, septic tanks and assessed value. Each of these issues is discussed separately below.

1. Prior recorded covenants

There are several prior recorded covenants on the property:

A. CONSERVATION COVENANT RUNNING WITH THE LAND

There is a CONSERVATION COVENANT RUNNING WITH THE LAND, dated November 23, 2010 and recorded at AF# 4720078 (the "Conservation Covenant") that restricts alteration of certain described habitat areas "except as exempted or as authorized by the Responsible Official through an approved Habitat Permit."

The proposed Haley Short Plat does not propose any impacts in of the areas described for protection in the Conservation Covenant. Only mitigation plantings are proposed for these areas, which will further enhance and protect the areas that are protected by the Conservation covenant.

Further, the express language of the Conservation Covenant allows use of the protected habitat areas pursuant to "an approved Habitat Permit." Since the Applicant is proposing no impacts to the habitat areas protected by the Conservation Covenant and since the Applicant is obtaining a habitat permit for the proposed mitigation plantings as part of this Haley Short Plat application, the proposal fully complies with the Conservation Covenant.

B. AGREEMENT AND COVENANT RUNNING WITH THE LAND

There is an AGREEMENT AND COVENANT RUNNING WITH THE LAND dated September 30, 2009 and recorded at AF# 4607275 (“the Agreement and Covenant”). The Agreement and Covenant relates to uses in the existing residence on Lot 2. Applicant believes the Agreement and Covenant may no longer be applicable due to annexation and subsequent code changes, including the 2012 amendments to the SMP (See Section 2.b of the Agreement and Covenant); however, the issue of whether the Agreement and Covenant remains applicable or is now null and void is beyond the scope of this short plat application.

The Haley Short Plat application is an application to create a new lot, not an application to alter uses of the dwelling that is the subject of the Agreement and Covenant. Since the Agreement and Covenant relates only to uses inside an existing dwelling, the Agreement and Covenant is irrelevant to the Haley Short Plat application and is inapplicable to any determinations the City of Camas needs to make to approve the Haley Short Plat.

C. CONCOMITANT REZONE AGREEMENT

There is a CONCOMITANT REZONE AGREEMENT AND COVENANT RUNNING WITH THE LAND, DALE E. ANDERSON, REZONE #92-16-813, dated September 7, 1993 and recorded at AF# 9309140312 (the “Concomitant Rezone Covenant” or the “Covenant”).

Also recorded with the Concomitant Rezone was a related resolution, Resolution 1993-08-01, adopted August 4, 1993 (“Resolution 1993-08-01”).

The Concomitant Rezone also refers to Plat Note L (“Plat Note L”) on the Short Plat recorded at Book 3, page 253, which states: “L. Pursuant to Resolution No. 1993-08-01, no further divisions of these lots shall be proposed.”

None of these recorded documents preclude the proposed Haley Short Plat. Plat Note L merely implements the requirements of Resolution 1993-08-01, which in turn is implemented by the Concomitant Rezone Covenant.

Section 4 of the Concomitant Rezone Covenant states:

“This Covenant shall remain in full force and effect until amended, modified or terminated by the action of Applicant and Clark County in zoning proceedings appropriate for that purpose. Nothing in this Covenant shall be construed in limiting in any way the authority of Clark County, or its governmental successors, from approving amendments or modifications to this covenant at the request of Applicant, its heirs, assigns or successors in interest. It is expressly provided that this Covenant may be amended, modified, or terminated solely by the approval of Clark County or its governmental successors, at the request of Applicant, its heirs, assigns, or successors, and under no circumstances shall any approval by any other person or entity be required in order for

Applicant to amend, modify or terminate this Covenant in whole or in part.”

Thus, based on the express language of the Concomitant Rezone Covenant, “under no circumstances shall any approval by any other person or entity be required in order for Applicant to amend, modify or terminate this Covenant in whole or in part.” Additionally, all of the land subject to the Short Plat recorded at Book 3, page 253 is still owned by our clients. Therefore, none of the neighbors or project opponents have any standing to prevent modification or termination of the provisions of Resolution 1993-08-01, Plat Note L, or the Concomitant Rezone Covenant.

Furthermore, the Concomitant Rezone Covenant expressly states that “this Covenant may be amended, modified, or terminated solely by the approval of Clark County or its governmental successors, at the request of Applicant.” Since the subject property has been annexed, the City of Camas is the governmental successor of Clark County and has the sole authority to modify or terminate the Concomitant Rezone Covenant. The Applicant hereby requests termination of the Concomitant Rezone Covenant.

The City of Camas does not have any specific procedures governing the termination of Concomitant Rezone Covenants, but Section 4 of the Concomitant Rezone Covenant provides that the Covenant may be “modified or terminated by the action of Applicant and Clark County in zoning proceedings appropriate for that purpose.” This short plat application process is a “zoning proceeding” appropriate for termination of the Concomitant Rezone Covenant.

Clark County allows modification or termination of a concomitant rezone covenant under UDC 40.560.020.E.2 if the following criteria are met:

- a. In the case of full covenant release, whether development of the site would be consistent with current zoning regulations and comprehensive plan recommendations; and
- b. In the case of either full or partial covenant release or covenant modification, whether adequate public/private services are available to support development of the site; and
- c. In the case of either full or partial covenant release or covenant modification, whether the requested action would unreasonably impact development undertaken on nearby properties in reliance upon the covenant commitments; and
- d. In the case of partial covenant release or covenant modifications, whether future development under current zoning will be consistent with existing and planned development.

As discussed below, each of these criteria are met here and the Concomitant Rezone Covenant should be terminated.

a. whether development of the site would be consistent with current zoning regulations and comprehensive plan recommendations

As demonstrated in the Applicant's written narrative and the documents submitted in support of the application, the Haley Short Plat application meets all current zoning and comprehensive plan provisions. The Concomitant Rezone Covenant dates back to a time when the property was in the unincorporated area of Clark County and had different zoning.

Since the property has been annexed to the City, and the City of Camas has applied City zoning to the property, the original reason for the Concomitant Rezone Covenant no longer exists. Since the proposed Haley Short Plat meets all current zoning and comprehensive plan regulations, the Concomitant Rezone Covenant is no longer needed and should be terminated.

b. whether adequate public/private services are available to support development of the site

As demonstrated in the Applicant's written narrative and the documents submitted in support of the application, the Haley Short Plat application, public/private services are available to support the Haley Short Plat. Since public and private services are adequate for the proposed Haley Short Plat, the Concomitant Rezone Covenant is no longer needed and should be terminated.

c. whether the requested action would unreasonably impact development undertaken on nearby properties in reliance upon the covenant commitments

This criterion is inapplicable because there is no development on nearby properties that was taken "in reliance on the covenant." This criterion would apply if there were a rezone to allow particular uses and surrounding property was developed consistent with those uses. For example, if there were a rezoning of industrial to residential, and surrounding properties were then developed to residential uses (rather than industrial uses) in reliance on the rezone. In such cases it could be said that surrounding properties were developed in reliance on the covenant commitments and it would be unfair to reverse the covenant to allow industrial development next to the new residential uses.

Nothing like that happened here. Uses and developments on surrounding properties have been developed for the same uses as are proposed by the Haley Short Plat – single family residences. The proposed Haley Short Plat is in compliance with all zoning and comprehensive plan regulations, including those with respect to density and lot size. To the extent this criterion applies at all, it is met because there is nothing unreasonable about undertaking a short plat that is in compliance with all applicable regulations.

d. whether future development under current zoning will be consistent with existing and planned development

The existing and planned development in the vicinity consists of single family residences. The proposed Haley Short Plat creates one additional lot for a new single family residence, which is consistent with the existing development. The Haley Short Plat is also fully consistent with all

applicable zoning and comprehensive plan regulations, including those pertaining to lot size and density, which makes the proposed Haley Short Plat fully consistent with planned development in the vicinity. Therefore this criterion is met.

Since there is no longer a valid need or reason for the Concomitant Rezone Covenant and since the criteria for modifying or terminating the Concomitant Rezone Covenant are met, the Applicant's request to terminate the Concomitant Rezone Covenant should be granted.

2. Maintenance of commonly owned private facilities

The requirement in CMC 17.09.030.D.7 that "Provisions are made for the maintenance of commonly owned private facilities" refers to "private facilities" that are "commonly owned" by the lots in the short plat. It does not refer to maintenance of pre-existing private access easements over property owned by third parties. Therefore, to the extent this criterion applies, it has been met.

Additionally, there is no criterion nor evidence in the record to support the neighbors and project opponents request that this Applicant pay to repave the private road. Further, any condition imposed on a short plat pertaining to infrastructure improvements would need to comply with RCW 82.02.020 and the US Supreme Court cases of Dolan and Koontz related to proportionality. The Haley Short Plat only creates one new lot. It would not be proportional to require a single lot owner to pay for a road repaving that serves multiple lots.

That said, the Applicant has made good faith and reasonable efforts to negotiate a private maintenance agreement with the neighbors and project opponents, but ultimately that effort by the Applicant was rebuked. In any event, there is no lawful basis for a short plat to be denied or conditioned on maintenance agreements with third parties. That is a private civil matter between the property owners subject to the pre-existing easement. Since all of the applicable criteria for a short plat are met, the Haley Short Plat should be approved.

3. Shoreline critical areas

The neighbors and project opponents have raised an issue under SMP 16.61.040(D)(2)(b), which states that the buffer width can't be reduced by more than 25%. The neighbors argue that this provision limits the Applicant's ability to reduce buffers, notwithstanding SMP 16.61.030(E)(3)(e) (buffer averaging), which allows the buffer to be reduced up to 50%. Applicant disagrees. Therefore, based on SMP 16.61.030(E)(3)(e), the application could be approved as originally submitted.

Nevertheless, the City need not resolve this conflict in the SMP because the Applicant has submitted a revised Critical Areas Report that reviews the proposal under an entirely different "Alternative Mitigation" section of the SMP.

SMP 16.61.040(D)(4) states: "Alternative Mitigation for Stream Buffer Areas. The requirements set forth in this section may be modified at the City of Camas's discretion if the Applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected drainage basin as a result of alternative mitigation measures." Thus, SMP

16.61.040(D)(4) supersedes any limitation in SMP 16.61.040(D)(2)(b) when the Applicant demonstrates alternative mitigation measures can obtain greater habitat functions on a per function basis.

In this case, the Applicant has submitted the Updated Critical Areas Report by Olsen Environmental dated September 9, 2019 demonstrating that alternative mitigation measures can obtain greater habitat functions on a per function basis under SMP 16.61.040(D)(4). Therefore, the application meets the requirements of the SMP and should be approved.

4. Septic tank issues

The septic tank referred to in the August 5, 2019 letter from the neighbors and project opponents has been inspected and approved by the Health Dept. A copy of that inspection approval has been submitted for the record. In addition, as part of this project all septic systems will be inspected and approved prior to final occupancy.

5. Assessed value

Applicant disagrees with the neighbors and project opponents mischaracterizations of the effect on assessed values of the subject property. Nevertheless, the effect on assessed value is wholly irrelevant to any of the approval criterion for a short plat. Therefore, Applicant chooses not to respond to these mischaracterizations relating to assessed value because the effect on assessed value is irrelevant to any applicable approval criterion.

In conclusion, since the application meets all applicable approval criterion, as demonstrated above and in the applicant's written narrative and other documents supporting the application, including but not limited to the Updated Critical Areas Report by Olsen Environmental dated September 9, 2019, the Applicant respectfully requests that the Haley Short Plat application be approved.

Sincerely,

LANDERHOLM, P.S.



STEVE C. MORASCH
Attorney at Law

SCM/jsr
Enclosure

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