

**BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an application by Lennar Northwest, Inc. for approval of a preliminary plat to divide 37.27-acres into 122 lots in the R-10 zone at 22630 NE 28 th Street, in the City of Camas) CORRECTED FINAL ORDER ON <u>RECONSIDERATION</u> FILE# SUB21-01 (Camas Heights Subdivision)
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A. SUMMARY

1. On June 22, 2022, City of Camas Hearing Examiner Joe Turner (the "examiner") issued a Final Order denying this application without prejudice (the "Final Order"), based on a finding that the applicant failed to demonstrate that the application complies with CMC 16.61.030.A, i.e., that the proposed development will substantially maintain the level of habitat functions and values on the site and that it minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.

2. CMC 18.55.235 provides that any party may request reconsideration of the examiner's decision if they believe that the examiner's decision is "[b]ased on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing..."

3. On June 22, 2022, the applicant filed a request for reconsideration of the examiner's Final Order, arguing that the examiner can impose conditions of approval on the application to ensure that the final development will comply with CMC 16.61.030.A, that the plat can be modified to result in no net loss of habitat function and values. The applicant proposed a condition approval requiring confirmation of such from the Washington Department of Fish and Wildlife ("WDFW").

4. On June 9, 2022, the examiner issued a Final Order on Reconsideration approving the application subject to conditions. However, the examiner failed to incorporate amendments to the conditions approval listed in the Staff Report. This Corrected Final Order on Reconsideration remedies that error by incorporating the correct conditions of approval.

B. DISCUSSION

1. CMC 18.55.235 provides:

Any party of record believing that a decision of the hearings examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing, may make a written request to the examiner, filed with the city clerk, to be accompanied by an appeal fee, for reconsideration by the examiner.

A. Time Frame. The request for reconsideration shall be filed within fourteen calendar days of the date the decision was rendered.

- B. Content. The request for reconsideration shall contain the following:
1. The case number designated by the city and the name of the applicant;
 2. The name and signature of each petitioner;
 3. The specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal must explain why such evidence should be considered.

2. The examiner finds that the applicant is a party of record. The applicant filed the request for reconsideration on June 22, 2022, within the 14-day time limit of CMC 18.55.235.A. The request included the information required by CMC 18.55.235.B. Therefore, the examiner finds that the request for reconsideration complies with the procedural requirements of CMC 18.55.235.

3. In the original decision, the examiner concluded that the application complies with all but one of the applicable approval criteria; the applicant failed to bear the burden of proof that the application complies with CMC 16.61.030.A, i.e., that the proposed development will substantially maintains the level of habitat functions and values on the site and that it minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.

4. The examiner concluded that it may be feasible to modify the plat to preserve more of the existing mature Oregon white oak trees on the site, specifically by implanting some variation of the applicant's proposed "cul-de-sac plan" (Exhibit 17). Potential variations that could preserve additional oak trees include:

a. Modifying the layout of the cul-de-sac plan and/or eliminating lots to preserve trees 12171, 12347, 12302, 12303, and 12300, several of which are located near the boundaries of the proposed lots.

b. Modifying the alignment of NE 85th Avenue and "D" Street to preserve Tree 12301.

5. The applicant could further modify the cul-de-sac plan to enhance cross-circulation and emergency vehicle access in the southeastern portion of the site by connecting NE 85th Avenue to 'D' Street or NE 86th Avenue, reducing the length of NE 86th Avenue and eliminating the issue with an over length cul-de-sac street. This street connection would require filling of Wetland B, which the applicant proposed with the original site plan. However, filling of the wetland would allow the applicant to develop additional lots in the southeast portion of the site, mitigating lots removed to protect the oak trees discussed above. As discussed in the Final Order, filling Wetland B is consistent with the Code.

6. However, the examiner concluded that he cannot adopt conditions of approval to ensure compliance with CMC 16.61.030.A without imposing a specific design for the development, which would exceed the scope of the examiner's authority.

7. On reconsideration the applicant argued that the examiner can impose conditions of approval that may require substantial redesign of the proposed plat and cited prior decisions where the examiner imposed such conditions. The applicant proposed that the examiner approve the application subject to the following condition of approval:

Prior to final engineering approval for construction of the first phase, the Applicant must comply with the recommendations of WDFW in Exhibit 34, and provide documentation that it has consulted with WDFW on the final proposal to protect, remove, and mitigate impacts to Oregon white oak demonstrating that no net loss of habitat functions and values will occur.

8. The examiner finds that it is feasible to redesign the preliminary plat to preserve additional mature Oregon white oak trees on the site. The condition of approval proposed by the applicant is sufficient to ensure that the redesign will preserve such trees where feasible, mitigate for the loss of trees that cannot be preserved, and ensure that the proposed development will substantially maintain the level of habitat functions and values on the site and minimize habitat disruption or alteration beyond the extent required to undertake the proposal. CMC 16.61.030.A. WDFW is the agency with expertise regarding Oregon white oak habitat and the feasibility of retaining trees or providing adequate mitigation. Therefore, imposing a condition of approval requiring consultation with WDFW and determination that the revised design will result in net loss of habitat functions and values will ensure that the application complies with CMC 16.61.030.A.

9. City planning and engineering review of the revised plat through the final engineering and final plat processes will ensure that the final plat complies with all other applicable Code standards.

10. Therefore, the examiner grants the reconsideration request and approves the application subject to conditions of approval.

C. CONCLUSION AND DECISION

Based on the above findings the examiner grants the reconsideration request and approves FILE# SUB21-01 (Camas Heights Subdivision) subject to the following conditions of approval:

Standard Conditions:

1. Engineering site improvement plans shall be prepared by a licensed civil engineer in Washington State in accordance with the City of Camas Design Standards Manual (CDSM) and CMC 17.19.040.
2. The engineering site improvement plans shall be and submitted to Community Development (CDev) Engineering for review and approval.
3. Community Development (CDEV) Engineering shall collect a total 3% fee for plan review and construction inspection (PR&CI) for the proposed development.

- a. A preliminary construction estimate shall be submitted to CDEV Engineering prior to, or with, submittal of plans for first review.
 - b. Payment of the 1% plan review (PR) fee shall be due prior to the start of the plan review process.
 - c. Payment of the 2% construction inspection (CI) fee shall be due prior to construction plan approval and release of approved plans to the applicant's consultant.
 - i. Under no circumstances will the applicant be allowed to begin construction prior to construction plan approval.
4. Installation of public improvements shall be in accordance with CMC 17.21 Procedures for Public Improvements.
 5. Existing water wells, septic tanks and septic drain fields shall be properly abandoned and/or decommissioned in accordance with State and County guidelines prior to final plat approval.
 6. Any entrance structures or signs proposed or required for this project will be reviewed and approved by the city. All designs will be in accordance with applicable City codes. The maintenance of the entrance structure will be the responsibility of the homeowners.
 7. The applicant will be responsible for ensuring that private utilities; underground power, telephone, gas, CATV, streetlights, and associated appurtenances are installed.
 8. A 6-foot private utility easement (PUE) shall be located outside of the right-of-way on public streets and outside of the tracts on private streets.
 9. A draft street lighting plan shall be submitted for review prior to final plan submittal to Clark Public Utility.
 10. The applicant will be required to purchase all permanent traffic control signs, street name signs, street lighting and traffic control markings and barriers for the improved subdivision.
 11. Final plat and final as-built construction drawing submittals shall meet the requirements of the CMC 17.11.060, CMC 17.01.050, and the Camas Design Standards Manual.
 12. The applicant shall remove all temporary erosion prevention and sediment control measures from the site at the end of the two-year warranty period, unless otherwise directed by the Public Works Director.
 13. A homeowner's association (HOA) will be required and a copy of the CC&Rs for the development will need to be submitted to the City for review and approval. Specifically, the applicant will need to make provisions in the CC&Rs for ownership and maintenance of the private storm drainage systems, open spaces, retaining walls, fencing, walls, landscaping, irrigation, private roads, and tracts or easements outside of the City's right-of-way if applicable. Further, all necessary easements and dedications should be noted on the final plat.
 14. Accessory dwelling units shall not be precluded from the CC&R's.
 15. The applicant shall take appropriate measures to ensure landscaping success for a minimum of three years after issuance of Certificate of Occupancy. If plantings fail to

survive, the property owner shall promptly replace them. Appropriate measures include requirements in the CC&Rs or other method approved by the director.

16. Automatic fire sprinklers installed per NFPA 13D or 13R shall be required in all new residential structures.
17. Provisions for parking enforcement on private Tracts/access driveways, acceptable to the Fire Marshal, shall be included in the CC&Rs at the time of final platting.
18. Per CMC 17.21.060.H Permits for one sales office and/or one model home per plat or phase may be issued after the final plat is recorded, and prior to final acceptance. Building permit applications, for any other residential buildings, will not be accepted until after final acceptance.

Special Conditions of Approval:

Planning:

19. If potential artifacts are discovered during construction, work must immediately cease, and both the State Department of Archaeological and Historic Preservation and the City shall be notified.
20. The recommendations in the geotechnical report shall be followed.
21. The recommendations in the SEPA comment from the Department of Ecology shall be followed.
22. A final mitigation plan shall be submitted with mitigation plantings provided on site. If all mitigation plantings cannot be accommodated on site, then the purchase of habitat credits may occur.
23. The installation of temporary construction fencing prior to construction that clearly marks in the field critical area buffers (i.e., wetland and Oregon White Oak) and fencing should remain throughout permitted construction activities.
24. Prior to final engineering approval for construction of the first phase, the Applicant shall comply with the recommendations of WDFW in Exhibit 34 and provide documentation that it has consulted with WDFW on the final proposal to protect, remove, and mitigate impacts to Oregon white oak demonstrating that no net loss of habitat functions and values will occur.
25. Wetland credits purchased for Wetland B shall be purchased prior to work within the wetland.
26. Per the Department of Fish and Wildlife recommendation, the applicant shall replace the Oregon White Oaks at a 5:1 ratio unless otherwise approved by the WDFW.
27. To prevent future pruning or removal of Oregon White Oaks in Tract M due to housing construction and grading, staff finds an arborist shall assess the Oregon White Oaks proposed for retention and the proposed tract size to ensure the survival of the trees.
28. The setback standards below shall apply to the entire development and shall be noted on the plat:
 - a. Minimum Front Yard Setback: 15 feet, Garage: 20 feet
 - b. Minimum Side Yard Setback: 5 feet,

- c. Minimum Rear Yard Setback: 15 feet
 - d. Maximum Lot Coverage: 50%
29. The trees identified for preservation shall comply with the tree protection recommendations of the tree survey and assessment. Any required revisions to the site plan, such as building setbacks and/or site improvements, will require an updated Tree survey for City and review and approval prior to Engineering Plan approval and will be conditioned as such.
 30. Exterior retaining walls facing the public right-of-way shall be “set back a distance of one foot for every foot in height of a fence in excess of allowed height” per CMC 18.17.060.D. and provide additional landscaping consisting of groundcover, shrubs, and trees.
 31. The applicant should consider construction techniques that would decrease the noise associated with the airport per CMC 18.34.080.A

Prior to Final Engineering Plan Approval:

Planning:

32. A detailed construction drawing per CMC 16.53.050.E.3 is to be submitted to the City for review and approval.

Engineering:

33. Based on the projected number of ADTs noted in the October 26, 2021, TIA, the following locations for traffic calming measures shall be shown on the final engineering plans.
 - a. Intersection of N 87th Avenue and N Farrell Street ;
 - b. Intersection of N 87th Avenue and N Hollingsworth Street;
 - c. Additional onsite traffic calming measures may be required. Applicant to discuss with staff prior to final engineering plan approval.

Water

34. The applicant shall work with the city’s consultant to confirm head losses in the existing system due to the Camas Heights demands.
35. The applicant is to submit a revised set of water utility plans showing the dead-end looped system for review and approval.
36. The applicant shall identify on the water utility plans those single-family lots that will require individual booster tanks.
37. The applicant shall conduct a system analysis of the 542 pressure zone that will serve the lower system 8-inch water system from the existing 8-inch and 24-inch water mains.
38. The water utility plans are to be revised to show the locations and size of each irrigation meter.

Storm Drainage

39. The Final TIR be revised to reflect the following corrections to Section A.6:
 - a. The proposed site is bounded by the Green Mountain Estates Phases 1-3 subdivision and a private parcel to the west, Green Mountain Estates Phase 4

subdivision to the north, the Country View Estates II subdivision to the east, and NE 28th Street to the south.”

40. The applicant shall:
 - a. Submit a revised TIR that address the mitigation measures for the surface runoff from the existing wetlands and the roadside ditch along NE 28th Street; and
 - b. Submit revised stormwater plans that are to address the elimination of the roadside ditch along the frontage and provide mitigation measures for the impact to the roadside ditch at the eastern end of the proposed development, as well as the impact to the remaining western segment of roadside ditch between the proposed development and the Green Mountain Estates frontage improvements on NE 28th Street.
41. The applicant shall submit a revised stormwater management plan for Lots 1-8, Lots 16-22, Lots 50-55, Lots 62-67, Lot 87, and Lots 88-94. Said plan should ensure that adjacent parcels and downstream drainageways and/or properties will not be negatively affected, per Camas Municipal Code (CMC) 14.02 and 17.19.040.C as stated below:
 - a. CMC 14.02 Stormwater Control:
 - 14.02.010.B.2 Minimize damage to property from increased runoff rates and volumes.
 - b. CMC 17.19 Design and Improvement Standards:
 - 17.19.040.C.3 Storm Drainage - The storm drainage collection system shall meet the requirements of the city's officially adopted storm water standards.
 - 17.19.040.C.3.e - All lots shall provide drainage for stormwater runoff from roof and footing drains to an approved drainage system. Rear yard low point area drains and/or storm drain lateral stubs connected to an approved drainage system shall be provided to each lot as necessary to prevent stormwater runoff impacts to adjoining parcels as determined by the city.
42. The final stormwater (TIR) report is to be submitted for review that addresses MRs #2 and #4, per the latest Ecology's 2019 SWMMWW.

Erosion Control

43. The applicant should be required to submit the Erosion Sediment Control (ESC) plans, as a part of the site improvement plans, for review and approval.

Sanitary Sewer Disposal

44. A note should be placed on the final plat that a Latecomers fee in the amount of \$534.14 per Lot shall be collected at time of building permit issuance for the proportionate share of reimbursement for the Goodwin Road Sanitary Sewer Pump Station, per Latecomer Reimbursement Agreement 5594198, recorded 03/25/2019, Clark County Records.
45. Any existing wells, or septic systems to be decommissioned and documentation should be provided to the city that said wells and/or septic systems have been properly decommissioned in accordance with State and County guidelines. Additionally, any water rights associated with a decommissioned well shall be transferred to the City.

Roads

46. The applicant shall submit road profiles for review and approval on all the proposed local roads and for informational purposes on NE 28th Street.
47. The applicant shall be required to provide a minimum 25-foot curb radius or work with staff to provide an alternate approved design at the locations that transition from public road to provide road. These locations are as follows:
 - a. Tract E: A 25-foot curb radius is required on the north side only adjacent to Lot 35.
 - b. Tract I: A 25-foot curb radius is required on the east side only adjacent to Lot 84.
 - c. Tract K: A 25-foot curb radius is required on the south side only adjacent to Lot 116.
48. The applicant shall provide a design for a ‘No Parking and Towing’ sign for review and approval. Said sign is to include contact information for a towing company, as the city does not provide towing on private roads, nor does the city enforce no parking on private roads. Additionally, the applicant should be required to install the ‘No Parking and Towing’ signs prior to final acceptance.

Utilities, Street Lighting, Street Trees, and Other Improvements

49. All street light locations are to be shown on the engineering and landscape plans.
50. Prior to the applicant’s submittal of the electrical plans for streetlights to Clark Public Utilities, draft electrical plans for street lighting are to be submitted for review and approval by the City.
51. The applicant shall submit revised stormwater facility plans that provide for a minimum 6-foot high black vinyl coated chain link fence with sight-obscuring slats installed along the west and north property lines of Tract A where the tract abuts the existing single-family parcel to the west and the future Lots 1 thru 5 to the north. Additionally, the plans are to provide for a minimum 16-foot wide double gate at the access road to the facility and a minimum 4-foot wide man gate.

Dedications and Easements

52. The applicant shall show the private stormwater easements on the construction drawings and on the final plat.

Traffic Analysis

Prior to Final Plat Approval:

Planning:

53. A final mitigation plan per CMC 16.51.180, CMC 16.53.050.E., and CMC 16.61.030 are required.
54. The applicant shall post a mitigation bond in an amount deemed acceptable by the city to ensure the oak and wetland mitigation is fully functional per CMC 16.51.250.
55. The applicant shall submit renderings of the proposed park amenities and include at a minimum a play structure, benches, picnic tables, and landscaping.
56. An avigation easement is required to be recorded on the title that provides notice that the property is located within an air traffic area per CMC 18.34.020.B and included as a note on the final plat.

Engineering:

57. The applicant shall identify on the final plat those lots requiring individual booster tanks along with a plat note to the effect that “Lots ___ thru ___ will be required to install individual booster tanks, which are to be owned and maintained by the individual lot owners.
58. At the time of building permit issuance, the Lots in the subdivision are subject to a \$1,235.77 fee per Lot, as the proportionate share contribution for the Northshore Sewer Transmission System (previously known and approved as the “North Urban Growth Area – Sewer Transmission System” or NUGA-STs). If the NUGA SDC fees are updated to include the proportionate share fee amount of \$1,235.77 per Lot, the proportionate share fee will no longer be required.
59. The 10-foot wide private stormwater easements are to be shown as located on Lots 1-8, Lots 16-22, Lots 50-55, Lots 62-67, Lot 87, and Lots 88-94. Additionally, a plat note is to be added to the final plat that states that these private stormwater systems are to be owned and maintained by the Homeowners Association (HOA) and/or the applicable Lot owners upon which the private stormwater systems are located.
60. A note is to be added to the plat that states: At completion of the 2-year warranty period, the stormwater facility in Tract B will be owned and maintained by the Homeowners Association (HOA) and/or the homeowners. The City shall have the right-of-entry and authority to inspect of the stormwater facility located in Tract B.
61. The applicant shall be required to pay the proportionate share payment of \$10,400.00 for future improvements at the intersection NE 13th Street at NE 192nd Avenue to the City of Vancouver.

Prior to Final Acceptance:

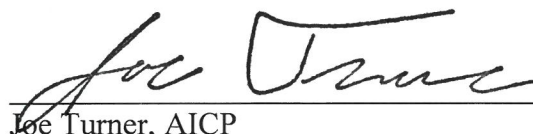
62. A conservation covenant should be recorded with the County to ensure long-term preservation of all the critical areas and any associated buffers, including maintenance of any mitigation actions. A copy of the recorded conservation covenant document must be submitted to the city.
63. All landscaping shall be installed or bonded for prior to final acceptance and must comply with the city’s approved street tree list.
64. The double frontage landscaping tract shall include a minimum of two-inch caliper trees every thirty feet on center, three-foot tall shrubs that form a continuous screen, groundcover plants that fully cover the remainder of the landscaped area and maintained in perpetuity by the homeowner’s association.
65. Permanent signs and fencing shall be installed at the edge of the critical area buffers per CMC 16.51.210.B and C. Sign and fencing specifications shall be submitted to the City for review and approval prior to installation.

Plat Notes

1. A homeowners association (HOA) will be required for this development. Copies of the C.C. & R’s shall be submitted and on file with the City of Camas.
2. Building permits will not be issued by the Building Department until all subdivision improvements are completed and Final Acceptance has been issued by the City.
3. Maximum building lot coverage for this subdivision is 50%.

4. The lots in this subdivision are subject to traffic impact fees, school impact fees, fire impact fees and park/open space impact fees. Each new dwelling will be subject to the payment of appropriate impact fees at the time of building permit issuance.
5. Lots ___ thru ___ will be required to install individual booster tanks, which are to be owned and maintained by the individual lot owners.
6. The 10-foot wide private stormwater easements that are located on Lots 1-8, Lots 16-22, Lots 50-55, Lots 62-67, Lot 87, and Lots 88-94 are to be owned and maintained by the Homeowners Association (HOA) and/or the applicable Lot owners
7. Tract B Storm Facility: At completion of the 2-year warranty period, the stormwater facility in Tract B will be owned and maintained by the Homeowners Association (HOA) and/or the homeowners. The City shall have the right-of-entry and authority to inspect of the stormwater facility located in Tract B.
8. A Latecomers fee in the amount of \$534.14 per Lot shall be collected at time of building permit issuance for the proportionate share of reimbursement for the Goodwin Road Sanitary Sewer Pump Station, per Latecomer Reimbursement Agreement 5594198, recorded 03/25/2019, Clark County Records.
9. Wetlands, critical areas, and associated buffers shall be maintained in their natural state as described in the Final Wetland Mitigation Plan (Note: add date after approval) that is recorded with this plat by the HOA. Any modifications to critical areas and buffers must be approved in writing by the city after submittal of a revised critical area report.
10. Tree topping is not permitted within this development, nor removal of more than 20 percent of a tree's canopy. Trees that are determined to be hazardous by a licensed arborist may be removed after approval by the City. Required street trees shall be promptly replaced with an approved species.
11. The Camas Heights subdivision is under a flight corridor for Grove Airfield; aircraft noise is to be expected.
12. In the event any item of archaeological interest is uncovered during the course of a permitted ground disturbing action or activity, all ground disturbing activities shall immediately cease, and the applicant shall notify the City and the Department of Archaeology and Historic Preservation (DAHP).

DATED this 18 day of June 2022, .



Joe Turner, AICP

City of Camas Land Use Hearing Examiner