

Kittitas County Commissioners

Agenda Staff Report

Agenda Date: August 4, 2015

Action requested:

Conduct a closed record hearing to consider the Hearing Examiner's recommendation for Big Buck Ridge Preliminary Cluster Plat (LP-07-00040).

Background:

Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre single family parcels and approximately eleven acres of open space. The plat proposes a group B water system and onsite individual septic systems. The subject property's zoning is vested as Residential 3.

The subject property is 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road (outside city limits), Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20-15-26010-0010 and 20-15-26010-0009.

The application for the Big Buck Ridge Plat was submitted to Community Development Services (CDS) on June 20, 2007. On July 18, 2007, staff issued a letter of incomplete application, requiring an address list for all landowners within 300 feet of the proposal. The file indicates that the requested address list was submitted to CDS on July 23, 2007 (see index document 10, page 1 of the record) On August 16, 2007 staff sent a letter to the applicant indicating that a prior land use action (the Andrus rezone RZ-06-00023) mandated through a SEPA Mitigated Determination of Non-Significance that a Traffic Impact Analysis (TIA) be completed (as well as a road variance) before review of the application could continue. The letter did not indicate a precise determination as to the status of the application at that time. Current Staff has taken the position that the application was complete at that time based on the following:

KCC Chapter 15A.03.040(3): *“A project permit application is complete for the purposes of this title when it meets the procedural submission requirements of Kittitas County and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude Kittitas County from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.”*

The Plat Application Form (see index document 5, page 1) stipulates that a “*Required Attachment*” for a preliminary plat is an “*Address list of all landowners within 300 feet of the site's tax parcel...*” This “*procedural submission requirement*” as described above, was met by the applicant July 23rd, 2007 following Staff's Deem Incomplete and Request for Additional Information on July 18th, 2007.

KCC Chapter 15A.03.040(4): *“Within 14 days after an applicant has submitted to the permitting agency additional information identified by the permitting agency as being necessary for a complete application, the permitting agency shall notify the applicant whether the application is complete or what additional information is necessary...”*

The letter from Staff requesting the TIA was written and sent on August 16th, 2007; 24 days after the submission of the address list requested in the original Deem Incomplete letter. Convention dictates that a failure to respond or clarify the completeness of an application within the timeframes provisioned in chapter 15A amounts to a de facto declaration of a complete application. The request for the TIA was not a *“procedural submission requirement”*.

KCC Chapter 15A.03.045(1): *“Once an application has been deemed complete, the Director may request the applicant to submit additional corrections, studies or other information on the proposed project. The Director shall set a reasonable deadline for the submittal of corrections, studies or other information when requested, and shall provide written notification of such requests to the applicant.”*

The requirement for the TIA was determined by Current Staff to be an *“additional correction, study or other information.”* as described above. No parameters for a delivery date of the study were provisioned in the letter.

The Notice of Application for the preliminary plat application was issued on February 9th, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on February 24th, 2015.

Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on March 25th, 2015. The appeal period ended on April 9, 2015 at 5:00 p.m. No appeals were filed.

The application was brought before the Hearing Examiner on April 23, 2015. Appearing and testifying on behalf of the applicant were Jeff Slothower and Wayne Nelson. Mr. Slothower and Mr. Nelson were both sworn in as witnesses and provided testimony as well as argument regarding alleged facts. Both testified that they were agents authorized to appear and testify on behalf of the applicant and property owner. Appearing and testifying from the public were the following individuals: Kay Muhlbeier, Kevin Daly, Diedre Link, Joe Skvarla, Shirley Person, Bruce Higgs, and James Carmody. Mr. Carmody, an attorney, was sworn in as a witness. He represents individuals who oppose the project.

At the conclusion of the hearing, the Hearing Examiner left the record open until May 15th, 2015 in order for the applicant, Mr. Carmody on behalf of his clients, and the County to respond to the Hearing Examiner's legal questions surrounding the law that applies to this matter and for the applicant to provide a response to the Fire Marshall's comments (Exhibit 84). On May 14th, 2015, the Hearing Examiner granted the applicant's motion to reopen the record to allow the inclusion of 3 additional exhibits, and further ordered that the record remain open until May 22nd, 2015. The Hearing Examiner issued his written Recommended Decision on June 8th, 2015; the hard copy was received by CDS on June 10th, 2015.

The Hearing Examiner (HE) disagreed with the Staff assessment that the application was “de facto” deemed complete in August of 2007. In his recommendation the HE states that “*the traffic impact analysis was intended to be submitted with the application materials for any future development*” and that it was “*required to be submitted in order for there to be a fully complete application.*” In findings numbers 27 through 45, the HE provides his rationale for recommending that the Big Buck Ridge Preliminary Cluster Plat (LP-07-00040) be remanded back to staff for processing with a deem complete date of January 26th, 2015, the date that of the notice of application.

On July 7th, 2015 the BOCC held a closed record hearing for discussion and decision on the Big Buck Ridge Plat. Staff presented a power point outlining the nature and history of the project. The board followed up with questions and discussion, but were not prepared to make a decision at that time; the hearing was continued to August 4th, 2015. Staff is available for continued discussion and prepared to present any information the Board may require.

Interaction:

Kittitas County Hearing Examiner and Community Development Services.

Recommendation:

Staff recommends that the Kittitas County Board of County Commissioners conduct the closed record meeting, as scheduled, to consider accepting the Hearing Examiner's recommendation of the Big Buck Ridge Preliminary Cluster Plat (LP-07-00040).

Handling: None

Lead Staff: Jeff Watson