



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

ADMINISTRATIVE APPEAL STAFF REPORT

TO: Kittitas County Board of Commissioners
FROM: Jeff Watson, Staff Planner
DATE: June 24, 2009
SUBJECT: O. Sieber Short Plat Appeal (SP-08-00052)

I. GENERAL INFORMATION

Proposal: On November 19th, 2008 Otto Sieber, landowner, submitted a short plat application and related documentation to Kittitas County Community Development Services (CDS) for the purposes of creating one 5.01 acre parcel, one 5.02 acre parcel, and one 7.59 acre parcel from two existing parcels; one 11.25 acres and one 6.37 acres in size. A public disclosure request form was filed concurrently by Encompass Engineering and Surveying of Cle Elum Washington, for "all past and future County correspondences related to this project that is normally sent to the applicant." After full review by CDS staff, conditional preliminary approval was granted on April 28, 2009. Condition #7 of that document required a cultural resource survey prior to final approval of the application. Condition #8 stipulated that should ground disturbing or other activities related to the proposed short plat result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). On May 12, 2009, James T. Denison Attorney at Law, on behalf of the applicant, filed an administrative appeal to the Kittitas County Board of County Commissioners (BOCC) asserting that CDS "was in error by imposing condition No. 7 as a condition for approval."

Location: The subject properties (tax parcels 234133 and 084133) are located east of State Route 821 (Yakima Canyon Road), west of Roza View Drive, and north of Burbank Creek Road in portions of Sections 21 and 22 of Township 15 north, Range 19 east, W.M. Kittitas County Washington.

II. SITE INFORMATION

Site Characteristics: An administrative site analysis was completed by Community Development Services in compliance with Title 17A. The Kittitas County Geographic Information System (GIS) indicates that there are portions of both wetlands and 100 year flood plain in the subject parcels, however based on survey data and known inaccuracies in the GIS parcel layer, CDS staff determined that there were no environmentally sensitive areas of consequence within the subject parcels. The site contains substantial vertical variation with elevation gains exceeding 150 feet in some areas, due in a large part to its proximity to both the Yakima River, and Burbank Creek (both within 1000 feet). The subject parcels are, for the most part barren of vegetation or structures, and are reputed to have been a rock quarry at one time (CDS has no verification documentation of this assertion).

III. ADMINISTRATIVE REVIEW

After initial processing and review, the proposal was presented to the Community Development Services Project Review Team (PRT) on December 17th, 2009, where discussion focused on the degree of slope, and the potential for access and onsite septic system complications. The application was deemed complete on December 19th, 2008; and formal notice of application was mailed to concerned agencies and individuals, as well as being published in the official newspaper of record (as per Kittitas County Code Chapter 15A.03), by Allison Kimball, CDS staff planner on January 8, 2009. The public comment period was set, as per Kittitas County Code 15A.03.060 ("...not less than 14 nor more than 30 days following the date of the notice of application") to expire at 5:00 pm on Monday, January 26, 2009. Several agencies and one concerned

neighbor submitted comments during that time frame, including the Confederated Tribes and Bands of the Yakama Nation on January 14, 2009. In this letter, from Johnson Meninick, the cultural resources program manager, the assertion was made that the proposed short plat *“is occurring within an area which has an extremely high potential for cultural sites and other cultural resources.”* He goes on to state that *“The Burbank Creek Valley is well known to the Yakama Nation as a place of resource gathering, homesites, as well as burial sites and places of spiritual significance.”* and that *“A review of the Washington State Department of Archaeology and Historic Preservation (DAHP) cultural site database indicates the rich cultural history of the area, with 22 previously recorded archaeological sites and isolated artifacts being found within 1-mile of the subject property.”* On January 28, 2009, Kittitas County Department of Public Works (KCDPW) requested additional information from the applicant regarding the documentation of an access easement to the tax lots, at which time the “clock stopped” on the comment period. On March 27, 2009, the requested documentation was submitted by the applicant to CDS, and on March 30, 2009, said documentation was forwarded to KCDPW by Ms. Kimball, her last day as an employee of Kittitas County. Following the reduction in force at CDS, Jeff Watson was deemed the planner of record for the application. Transmittal of comments was sent to the applicant on April 17, 2009, and on April 28, 2009, following substantial research, discussions with senior planning staff, DAHP staff, and the Kittitas County Prosecuting Attorney’s Office staff, the conditional preliminary approval of the application was issued contingent on, among other things, a cultural resource survey being *“...conducted prior to final short plat approval by a professional archaeologist as defined by (RCW 27.53.030)”*.

IV. APPEAL ELEMENTS

The Board of County Commissioners received a timely appeal from James T. Denison, attorney for the applicant, on May 12, 2009. Kittitas County Community Development Services received notice of the appeal from the Board of County Commissioners on June 13, 2009, which included the following appeal issues:

Appeal Issue:

Appellant:

The basis of the appeal is that CDS *“was in error in imposing condition 7 as a preliminary condition for approval”*, that it represented an *“unnecessary expense”*, and that condition #8, requiring work stoppage in the event of discovery of cultural or archaeological materials, *“is sufficient to address any discovery...”*. The applicant further believes that because the proposed site *“has been developed for various purposes over the years, with no indication of any probability items of archeological significance would be found on the platter ground”*, the imposition of condition #7 is unnecessary.

Staff Response:

In RCW 27.53.010 the Washington State Legislature declared that *“...the public has an interest in the conservation, preservation, and protection of the state’s archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources.”* RCW 27.53.060 continues this sentiment further and provides punitive disincentive by stating that *“On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director (of DAHP) for such activities.”* It does however stipulate in 27.53.070 that *“...field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department...”*. While placing a level of significance to the *“provisions and spirit of this chapter”* may be subject to interpretation, there is clearly compelling emphasis from the Legislature with respect to the *“proper public functions”* of providing *“information to state, federal, and private construction agencies regarding the possible impact of construction activities on the state’s archaeological resources”*. This emphasis is demonstrated in dramatic fashion by the creation of the Washington State Department of Archaeology and Historic Preservation; its designation as *“an appropriate agency to carry out these functions”* (27.53.020); granting it *“...such rule-making authority as is necessary to carry out the provisions of this chapter. (27.53.140)”*; and the stipulation that the *“act is to be liberally construed to achieve the legislature’s intent (27.44.901).”*

Title 27 provides the foundation for, and disperses some level of responsibility to, local agencies to make a reasonable effort to detect and protect the historical and archaeological resources within their spheres of influence. Bearing that in mind, Community Development Services staff recommends that condition #7 of the Conditional Preliminary Approval issued April 28, 2009, on the O. Sieber Short Plat (SP-08-00052) be upheld by the Board of County Commissioners for the following reasons:

1. The subject parcel has been identified by the Confederated Tribes and Bands of the Yakama Nation and the Washington State Department of Archaeology and Historic Preservation, two credible and informed governmental agencies, as having an “extremely high potential” for containing cultural resources based on its geographic, environmental, and geomorphic characteristics and location.
2. A cultural resource survey will provide a significant reduction of vulnerability in the event of civil or criminal litigation for all parties concerned; the applicant, the contractor, the buyer and the County. It is a prudent and conscientious act of good faith done with the best available science which is adherent to the “*provisions and spirit*” of Washington State Law.
3. The reliance on condition #8 alone, places the responsibility of cultural resource detection in untrained hands, whose primary focus is construction and development. It is highly unlikely that heavy equipment operators or foundation construction workers for example, will have any substantial knowledge, training, skills, or opportunity for the detection of the “*material remains of past human life including monuments, symbols, tools, facilities, and technological by-products*” (RCW 27.53.030).
4. Previous development or disturbance of the subject property has limited relevance, and should not serve as definitive indication of the existence of cultural resources. The policies, laws, public awareness, and social conventions regarding cultural resources have evolved significantly over the past 20 years (DAHP only became an independent agency in 2005). The heavy equipment operators or foundation construction workers 10 or 20 years ago were even less cognizant of the implications and importance of cultural resources.
5. Identifying the cultural resources, if any, at the subdivision stage represents a more logical planning and development process. Mitigation measures can be put into place prior to any ground breaking processes; culturally sensitive areas can be identified up front and avoided, and property lines, easements, and building envelopes can be adjusted accordingly if need be.
6. Identifying the cultural resources, if any, at the subdivision stage is far more cost effective. A single cultural resource survey can cover the entire subdivision for one price; future owners and contractors will not be burdened with the additional individual costs of conducting individual cultural surveys for each individual parcel. In addition, the potentially substantial costs of construction delays, damage assessments, reparations, civil fines, and restoration measures, could be sharply reduced or eliminated completely.
7. “Tagging” the newly created parcels for cultural resource surveys at the building permit or other future development stage would be logistically difficult if not impossible. Community Development Services does not possess the capacity to insure with any degree of reliability that surveys will be conducted at some point in the future.
8. It would represent an effort on behalf of Kittitas County toward responsible, constructive, and meaningful, interagency co-operation, another endeavor in which “*the public has an interest in*”.