

## Jeff Watson

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**From:** Deborah Girard <Girard@mftlaw.com>  
**Sent:** Tuesday, February 24, 2015 1:43 PM  
**To:** Jeff Watson  
**Subject:** Big Buck Ridge  
**Attachments:** Watson letter 022415.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mr. Watson, please see attached letter from James C. Carmody regarding the above-referenced matter.

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February 24, 2015

*Via email only*

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Re: Project Name : Big Buck Ridge  
Project File No. : LP-07-00040

Dear Mr. Watson:

We represent the property owners of The Cle Elum Ridge Community and provide these comments with respect to the Notice of Application for performance based cluster plat submitted by Becky Andrus requesting authorization to create 14 one-acre parcels and approximately 11 acres of open space. These comments will supplement comments provided by both clients and adjacent property owners.

**A. Application is Not Vested to Rural 3 Zoning District.**

The Notice of Application contains a statement that "...[t]he subject properties' zoning is vested as Residential 3." We disagree with this legal position and interpretation.

Becky Andrus submitted a long-plat application (File No. P-07-40) on June 19, 2007. The application was incomplete in two respects: (1) the application failed to include a list of adjacent property owners (CDS letter of 7/18/2007); and (2) application failed to include Transportation Impact Analysis (TIA) mandated by the Andrus Rezone (File No. Z-06-23). The rezone ordinance - Ordinance No. 2006-57 (11/21/2006) - established specific rules and requirements for further action regarding the Andrus property. Ordinance No. 2006-57-Andrus Rezone (Z-06-23) required the following:

At the time of a project action, the applicant shall submit a stamped traffic analysis from a licensed engineer in the State of Washington considering among other factors, intersection spacing, site distances, traffic volumes, load bearing capacities of soils, pavement thickness design, etc. Reference Current Kittitas County Road Standards.

The application requirement was imposed by Ordinance and a binding component for a complete application with respect to development of the Andrus Rezone Property. Kittitas County CDS advised the applicant of this requirement on August 16, 2007. Applicant did not submit required TIA until February 20, 2013. An additional two (2) years have passed with no activity on the file. More than six and one-half years have passed since the filing

of the initial application. The application should be processed according to current zoning, environmental and development regulations.

The rezone made the TIA a mandatory component of the preliminary plat application.

Vesting rules applicable to a proposed division of land are set forth in RCW 58.17.033, which provides as follows:

- (1) A proposed division of land, as defined in RCW 57.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land control ordinances, in effect on the land at the time *a fully completed application for preliminary plat approval of the subdivision*, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.
- (2) The requirements for a fully completed application shall be defined by local ordinance.
- (3) The limitations imposed by this section shall not restrict conditions imposed under Chapter 43.21C RCW.

Andrus did not submit the required Traffic Impact Analysis (TIA) until February 20, 2013. The filed report is grossly deficient and fails to address specific elements required by Ordinance No. 2006-57.

A second critical factor with respect to the issue of vesting relates to determinations made by the Growth Management Hearings Board and State Supreme Court with respect to rural densities and three acre zoning under the Kittitas County Zoning Ordinance. Both bodies determined that the Rural-3 and Agriculture-3 zoning districts were noncompliant with the goals and policies of the Growth Management Act (GMA). See GMAHB Decision Case No. 07-1-0004c and *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144 (2011). Kittitas County responded to the administrative and judicial determinations and adopted Ordinance 2013-001 which eliminated the three acre zones and rezoned the subject property. Ordinance 2013-001 was adopted on February 11, 2013. The supplemental required TIA information was not received until February 20, 2013. The application was not complete as of the date on which the zoning ordinance was adopted by the Board of County Commissioners.

Kittitas County Ordinance procedures further provide that "...an incomplete application shall expire after 180 calendar days unless the requested supplemental information is submitted in complete form." KCC 15A.03.040 (1). Kittitas County made the request for additional information on August 11, 2007. Andrus failed to provide the supplemental information within the mandated 180 calendar days. In fact, more than five (5) years passed before the information was submitted on the application.

#### **B. Traffic Impact Analysis (TIA) Fails to Comply with Ordinance No. 2006-57.**

Board of County Commissioners established specific requirements with respect to preparation of a Traffic Impact Analysis (TIA) for the Andrus rezone. Ordinance No. 2006-57 specifically required analysis which considered "...among other factors, intersection spacing, site distances, traffic volumes, load bearing capacities of soils, pavement thickness design, etc...." The rezone recognized that access to any development on the rezoned property would pass over and on a series of private easements and roadways. The access system was to be evaluated in a

detailed engineering analysis that assured road design and construction (both public and private) in accordance with applicable Kittitas County Road Standards. The TIA submitted in this case fails to contain the information required by the ordinance provision.

The TIA is specifically lacking any analysis of load bearing capacities of soils and pavement thickness design with respect to the private road segments. Further study and analysis is required as a prerequisite to processing of this application.

**C. Application Fails to Make Appropriate Provision for Access and Road Maintenance.**

Applicant proposes to utilize private road easements to access the proposed subdivision. The proposal seeks authorization to utilize Montgomery/Deer Creek/Big Tail Roads for primary access.<sup>1</sup> A significant portion of the access is over private roads and easements.

Applicant has not established a legal right to utilize the private roads for purposes of access to the expanded 14 lot subdivision. The added traffic will significantly increase noise, congestion, and wear and tear on the private roadway. The following are required with respect to use of the private roadway:

1. An applicant must provide confirmation and establishment of a legal right to use the private road and easement for purposes of the proposed subdivision. KCC 12.12.010(4). The record contains no evidentiary support for proposed use rights related to the private roads.

2. Confirmation and engineered plans for the entire length of the private road confirming that the road access meets minimum access requirements of Section 902-FIRE DEPARTMENT ACCESS-of the *International Fire Code* and are designed and constructed in conformance with *AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads* (AVT-400). KCC 12.010(1) and (2). Private roads are also required to meet design requirements of Table 12-1. KCC 12.12.020.

3. KCC 12.12.010(6) requires that all lots within the proposed subdivision participate in road maintenance agreement. The specific ordinance requirements include:

Maintained by the developer or legally responsible owner or homeowners association or other legal entity *made up of all benefited property owners* under the provisions of an acceptable and recorded "Private Road Maintenance Agreement", ...

Applicant has refused, in the past, to participate or share in road maintenance responsibilities for the private roadways. Subdivision review should also consider requirement for reimbursement of proportionate share of road development and maintenance with such funds to be held by owners association for application to future road maintenance and improvement responsibilities.

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<sup>1</sup> This property is not part of Meadow Ridge or Cle Elum Ridge (Section 23) plats. A Variance Request (RV-07-07) was approved by Road Variance Committee on October 17, 2007. It was with "...the condition that Montgomery Avenue be built to Kittitas County Road Standards and be certified."

4. The impact of added traffic upon private road access should be included in the Traffic Impact Analysis (TIA). The submitted TIA contains no specific information with respect to impacts upon the private road easements. In particular, the analysis should conclude both current and projected ADT traffic and volume impacts upon applicable road standards and requirements.

5. Kittitas County (CDS) specifically noted that Deer Creek Road currently serves more than 40 lots and that KCC 12.01.095(2) requires two interconnected ingress-egress routes that independently connect to and on-system county road. KCC 12.01.095(2). Site plan does not show or establish secondary access.

6. Applicant is required to obtain specific authorization from private land owners subject to road easement requirements. KCC 12.01.05(7) provides:

All parcel creations that access property over private lands, public lands, or road easements managed by other agencies must submit an approved easement from the land owners or road/easement managers that specifically address access, maintenance, seasonal restrictions and other restrictions and/or limitations. These easements and permits shall be presented or recorded prior to final approval.

Applicant has not requested nor been provided the necessary agreement for private road use.

7. SEPA environmental review has failed to consider alternative access to the subject property. Big Buck Ridge subdivision can be accessed through 6<sup>th</sup> and Columbia and not from Montgomery Avenue. The alternative access should be constructed to applicable county standards.

8. Applicant should be required to improve all private roadway access to applicable standards. KCC 12.01.090(B) specifically provides:

Any parcel creation abutting and impacting existing road shall improve the frontage of those roads in accordance with the standards. The extent of improvements shall be based on the assessment by the impacts of the proposed land development stated in Section A above. Short plats within the UGA creating only one additional lot to a tax lot with an existing dwelling unit are exempt from providing urban type street improvements but are subject to shoulder improvements providing these improvements are consistent with surrounding roads and do not present a safety problem.

See also KCC 12.01.090(A).

## CONCLUSION

We request the following:

1. That the application be processed in accordance with currently applicable zoning and development requirements and regulations;
2. That the TIA be supplemented with specific analysis of private road impact and improvement standards;
3. Submission of proposed Private Road Maintenance Agreement applicable to all properties utilizing private roads; and
4. Legal confirmation of easement rights with respect to the proposed expansion of use under easements. These comments will supplement other comments from adjoining property owners.

Very truly yours,  
MEYER, FLUEGGE & TENNEY, P.S.

  
James C. Carmody

JCC:dg

cc: Clients (via email only)