



**NOTICE OF FINAL ORDER ON RECONSIDERATION
GREEN MOUNTAIN PHASE 3
(FILE #SUB17-03)**

Reconsideration Issued: April 27, 2018

Decision Issued: March 23, 2018

Staff Contact: Robert Maul, Planning Manager
Phone: (360) 817-1568
Email: communitydevelopment@cityofcamas.us

Applicant: Green Mountain Land, LLC
17933 NW Evergreen Parkway, Suite 300
Beaverton, OR 97006

Property Owner: Jean M. Nagel

Location: The entire project is located north of NE Goodwin Road and northeast of NE Ingle Road in Camas, Washington and further described as Sections 17, 20 and 21, Township 2 North, Range 3 East of the Willamette Meridian, Camas Washington.

Zoning: **R-10** Phase 3 is located towards the northern end of the overall project area (Parcel numbers 171727-000, 172341-000, 171704-000).

THIS IS TO SERVE AS NOTICE that a request for reconsideration of the Green Mountain Phase 3 Subdivision (City file #SUB17-03) decision has been **DENIED**. The Hearings Examiner Final Order on Reconsideration is attached to this notice.

18.55.235 - Reconsideration by the hearings examiner (in part)

...

C. The hearings examiner may, after review of the materials submitted in conjunction with the reconsideration request, and review of the open record hearing transcript, take further action as he or she deems proper; including, but not limited to, denying the request, modifying the decision, or affirming the decision.

D. The hearings examiner shall issue a decision on a request for reconsideration within forty-five (45) days of the filing of the request for reconsideration. When a request for reconsideration has been timely filed, any appeal to Clark County Superior Court under the Land Use Petition Act shall be filed within twenty-one (21) days after a hearings examiner issues its decision on the request for reconsideration.

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

Regarding an application by Green Mountain Land, LLC) **FINAL ORDER ON**
for approval of a preliminary plat to divide 115-acres into) **RECONSIDERATION**
159 single-family lots, east of NE Ingle Road between) **SUB17-03 & SEPA 18-01**
NE 48th Circle and NE Goodwin Road in the City of Camas) **(Green Mountain Phase 3)**

A. SUMMARY

1. On March 23, 2018 City of Camas Hearing Examiner Joe Turner (the "examiner") issued a Final Order approving this application subject to conditions (the "Final Order"). 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..."

2. On April 5, 2018 the owners of 7 nearby properties ("Petitioners")¹ filed a request for reconsideration of the examiner's Final Order. The Request for Reconsideration provides:

The aspects of the decision being appealed are as follows:

1. The City of Camas [erred] in recommending to the Hearing Examiner the location of the access road serving Phase 3. The entry road parcel is not owned by the applicants (owned by Camvest GM LLC – Mr. Lon Combs) and an easement was not granted to the applicant until 2-9-2018 for the consideration of \$60,000.00;

The entrance parcel was not a part of the original PRD nor could the applicant [ensure] the City of Camas that the parcel/easement would be available – thus the delay and rescheduling of the original hearing date.

No evidence was submitted at the public hearing that the property owner has agreed to the improvements and that subsequent dedication to the City of Camas will occur.

¹ CMC 18.55.235.B (2) requires that a request for reconsideration contain "The name and signature of each petitioner." The Request for Reconsideration document includes signatures on behalf of: Margarit Hilfiker, Danny and Marie Jones, Paul and Gayle Freeman, Jeremy & Trisha Seifert, Robert & Suzanne Hall Trustee, Michael & Krista Lindhorst, and William & Shirley Huyette. Therefore these persons are "Petitioners" for purposes of this reconsideration request.

The document also lists Jeremy & Stephanie Baenen, Jason Kearny, Lonnie Hays, Tyler & Ginger Shoemaker, and Kelli Randolph. However, these property owners are not "Petitioners" for purposes of this reconsideration request, because they did not sign the reconsideration request document.

The City of Camas; by agreeing to accept ownership of the easement or land parcel by survey, includes the area as part of Phase 3 and can condition that acceptance upon conditions that reduce the impacts to surrounding properties such as noise and light attenuating masonry/concrete walls.

2. The Hearing Examiner [erred] in item “E” decision paragraphs 23 & 25 noted on page 15. The Hearing Examiner relied on information stated in paragraph k. on pages 4 and 5. WDOT does not have sole jurisdiction of the intersection of N.E. 58th Street (SR500/NE 199A). The planning process, while discussed between the parties, is not complete and Clark County has not agreed that a “*Round About*” is the preferred method of bringing the intersection to acceptable levels of service. The Hearing Examiner should delay the approval of Phase 3 (Case # SUB17-03) until a plan, approved by the jurisdictional parties is acceptable/approved with firm construction dates and financing.
3. The Hearing Examiner [erred] in accepting paragraph 61. on page 18 relating to the Fire Marshall comments. Indeed, accommodation for fire prevention with the use of fire sprinklers may be adequate – except in the case of a fire of external origin – but cross circulation in the event of emergency services was ignored. The plat indicates many [culs-de-sac] greater than the 400-foot cul-de-sac length stated in Camas code 17-19-040 – Infrastructure Standards and completely ignores a primary second access.
4. The Hearing Examiner [erred] in accepting paragraph 7, page 11 of discussion. Good planning practices do not place public roads on two sides of residential lots and that is effectively what is occurring with this proposal. The impact upon the residents of lots 5 through 11 of Mountain Glen Subdivision will be severe. The curvilinear plan for the road and the grade will cause light intrusion into the back of the homes as well as severe noise impacts that are not in existence today. The fact is, no re-development of Lots 5-11 of Mountain Glen will occur – not like a large vacant parcel. Deference should be given to that fact and the Hearings Officer should require appropriate mitigation.

Clearly understand, the owners/residents of Mountain Glen are not opposing the development of land, only asking that concern for compatibility and that impacts be mitigated as effectively as possible.

5. The Hearing Examiner [erred] in not requiring the property lines adjoining lot 12 of Mountain Glen Subdivision to be fenced with chain link fencing – paragraph 7a. pages 11 and 12. Most of the fencing can be accomplished by the Applicant/Proponents including the fencing

requirement in the covenants of the project with the balance of the fencing to be completed as the trail section is completed – by either the Developer or Clark County. The comment that “*no substantial evidence in the record that the future residents of this development are any more or less likely to engage in nuisance or illegal activities than other people*” is muted by the fact that the Hearing Examiner is requiring fencing of critical areas to prevent trespass.

3. Based on the findings provided or incorporated herein, the examiner denies the petitioners’ reconsideration request.

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.

2. CMC 18.55.235.B provides, in relevant part:

Content. The request for reconsideration shall contain the following:

...

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.

3. The examiner finds that Petitioners’ request for reconsideration is insufficient to comply with the requirements of CMC 18.55.235. The reconsideration process is not intended to allow the parties another opportunity to make their arguments. Reconsideration is provided to correct errors of law or fact or to allow consideration of newly discovered evidence that was not reasonably available at the original hearing.

4. In this case Petitioners’ failed to identify any alleged erroneous procedures or errors of law or fact in the examiner’s Final Order. Petitioners’ merely reiterated the same issues that were raised at the hearing. With the exception of the ownership of the parcel crossed by the access road, all of the issues raised in the request for reconsideration were raised during the public hearing and open record period. Petitioners offered some new evidence, but they failed to explain why the new evidence was not reasonably available at the public hearing and the evidence should be considered. Petitioners provided some new

argument in support of those issues, but those arguments are not persuasive, as discussed below.

5. Petitioners note that the applicant must extend the proposed access road over a parcel that the applicant does not own. However, Petitioners fail to show how that issue is relevant to the applicable approval criteria for this subdivision. The applicant must demonstrate that it is feasible to provide access to the site. According to Petitioners, the applicant acquired an easement over the parcel that it does not own on February 9, 2018. Therefore it is feasible to construct the proposed access within the easement. The conditions of approval require the applicant to construct the access road and dedicate it to the City prior to final plat, which will ensure that adequate access is provided to the subdivision.

6. Petitioners argue that City can require the applicant to provide a wall between the road and abutting properties as a condition of its acceptance of the road dedication. However, Petitioners failed to provide any support for this argument. CMC 18.55.220 authorizes the City to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be met. There is no evidence in the record that a wall is necessary to ensure compliance with any applicable approval criteria.

7. Petitioners assert that, because WSDOT does not have exclusive jurisdiction over the NE 58th Street (SR 500)/NE 199th Avenue intersection the examiner must delay approval of this application.

a. Based on the evidence in the record, WSDOT plans to construct a roundabout at this intersection and the roundabout is necessary to meet WSDOT's Level Of Service ("LOS") standards. There is no substantial evidence in the record to the contrary. Clark County did submit any comments on this application and did not raise any objections to the proposed roundabout.

b. In addition, Clark County has no authority to require the applicant improve this intersection. Assuming the intersection is subject to County jurisdiction, the Clark County Code ("CCC") 40.250.020.G requires that unsignalized operate at a minimum LOS D. Based on the applicant's traffic study, this intersection will operate at LOS D or better with full buildout of this subdivision. Therefore, even if the intersection is subject to the County's jurisdiction, the County has no authority to require improvements because the intersection meets County standards. The applicant is only required to contribute towards the cost of improving this intersection in order to meet WSDOT standards, which require a minimum LOS C for this non-HSS (Highways of Statewide Significance) rural intersection.

c. Approval of this application does not require construction of a roundabout. If WSDOT and the County agree to an alternative design for this intersection those jurisdictions can use the applicant's contribution to fund the construction of the alternative improvement.

8. The proposed development complies with the street design standards of the Camas Code.

a. CMC 17.19.040.B(14) does not prohibit cul-de-sac streets in excess of 400 feet in length. This section merely requires “[s]pecial considerations to assure that garbage, recycle, and emergency vehicles have adequate access.” All of the proposed cul-de-sac streets will terminate in turnarounds that will allow garbage, recycle, and emergency vehicles access to all of the proposed lots and turnaround at the end of the street. All homes within the subdivision will be equipped with emergency fire sprinklers as required by this Code section. The Fire Marshall reviewed this development and concluded that the proposed cul-de-sac streets provide adequate emergency access. Streets that are adequate for fire and other emergency vehicles are also adequate for garbage and recycle vehicles. The hearings officer finds that the expert testimony of the Fire Marshall is more persuasive than the general concerns raised by Petitioners.

b. The proposed streets do not comply with the block length requirements of CMC17.19.040.B(10)(b). However, this section expressly allows modifications to this standard where necessary based on topography and other physical constraints.

9. Petitioners assert that, “Good planning practices do not place public roads on two sides of residential lots...” However, the proposed access road will not abut lots within the Mountain Glen subdivision. Proposed Tract P is located between the road and these lots. Therefore, this development will not create any “double frontage” lots as defined by CMC 18.26.040² and the restrictions of CMC 17.19.030.D(6) are inapplicable. Petitioners also raised concerns with increased light and noise impacts from the roadway. However, those issues were addressed in the Final Order and Petitioners did not raise any new issues or provide any new evidence in their reconsideration request.

10. Petitioners repeat their assertion that the applicant should be required to provide a fence along the north boundary of the Phase 3 site to prevent residents of the site from trespassing onto their properties. This issue was addressed in the Final Order and Petitioners failed to provide any new argument or evidence in their reconsideration request. CMC16.51.210 requires fencing around critical areas. The Code does not require fencing between adjacent residential properties. The City did not require a fence as a condition of SEPA determination and that determination was not appealed and is now final. Therefore the examiner has no authority under the Code or SEPA to require such a fence.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that Petitioners failed to allege any erroneous procedures, or errors of law or fact. The reconsideration

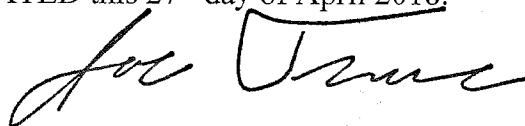
² CMC 18.26.040.B provides, in relevant part, “‘Double-frontage lot’ means a lot, other than a corner lot, having street frontage on two sides.”

request merely reiterated issues raised at the hearing. Petitioners' additional arguments regarding these issues are not persuasive. Therefore the examiner should deny the petitioners motion for reconsideration.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby denies Petitioners' motion for reconsideration.

DATED this 27th day of April 2018.

A handwritten signature in black ink, appearing to read "Joe Turner", written over a horizontal line.

Joe Turner, AICP
City of Camas Land Use Hearing Examiner