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## **City Heights Phase 2 Final Plat Notice of Decision Denial**

<b>Implementing Approval:</b>	Phase 2 Final Plat
<b>Project File Number:</b>	FP 2023-002
<b>Complete Application Date:</b>	October 13, 2022
<b>Notice of Decision Date:</b>	May 18, 2023

**Project Description:** In November of 2011, the Cle Elum City Council approved a Master Site Plan, an Annexation and Development Agreement, and a Planned Action Ordinance for City Heights, a planned mixed use development, that includes the development of up to 962 dwelling units on 358 acres in the City of Cle Elum generally located north of 6th Street.

This Phase 2 subdivision proposes 66 lots on 24.75 acres, with 10.76 acres of open space within Tract GG of the Phase 1 Final Plat. The Phase 2 subdivision application also includes construction of several local streets and alleys, construction and relocation of trails, installation of water, sewer, and stormwater improvements, private amenities for use by the residents of the subdivision, and offsite improvements. The offsite improvements include the Zone 3 water main extension and construction of the access road that will connect to Montgomery Street (referred to as the "Interim Access"). All documents relating to the City Heights project and the Phase 2 subdivision application can be accessed from the City's website: <https://cityofcleelum.com/city-services/planning/city-heights/>.

**SEPA Review:** The City of Cle Elum issued an environmental impact statement for the City Heights project on November 12, 2010 and subsequently adopted Ordinance 1353 on November 8, 2011 designating City Heights as a planned action in accordance with the provisions of RCW 43.21C.031 and WAC 197-11-164. Staff found the Phase 2 Preliminary Plat, with exceptions, to be consistent with the City Heights EIS and no additional SEPA review or threshold determination was required. The exceptions included development of Tract A (which is a portion of the Phase 3 Preliminary Plat), and the construction of roads or infrastructure outside of City limits.

### **Staff Findings and Conclusions:**

- The applicant, City Heights Holdings, LLC, submitted the Phase 2 Preliminary Plat application on March 11, 2022, and submitted an updated application on March 14, 2022. Staff deemed the application complete on April 1, 2022. Staff issued a notice of application on April 7, 2022.
- Staff issued a consistency determination on the preliminary plat application on May 3, 2022, which was appealed by the applicant.

- The appeal was settled by the signing of the Phase 2 Memorandum of Understanding (MOU), signed by the Mayor and applicant on June 1, 2022, which clarified the requirements of the development agreement through decision of an arbitrator, and specified additional provisions necessary for approval of the Phase 2 Subdivision.
- The MOU required that offsite approvals (the “Offsite Scope”), including the Zone 3 water main and Interim Access, be constructed prior to final approval, provided that the applicant may bond for the construction of the improvements. MOU at Section B(4).
- Staff issued a revised Notice of Determination supported by the MOU on June 1, 2022.
- Staff issued a grading, excavating, and land filling permit on June 10, 2022 with approved infrastructure plans. The permit was revised on June 23, 2022. The permit expires on June 10, 2023.
- The applicant submitted the final plat application on September 29, 2022. Staff issued a written decision that the final plat application was complete on October 13, 2022.
- As authorized by the Development Agreement and MOU, Staff requested additional information on November 3, 2022. The applicant submitted additional information on December 2, 2022. MOU at Section A(2)(b).
- As authorized by the MOU, and because the applicant did not submit all of the requested information to demonstrate consistency with the provisions of approval, Staff issued an advance notice of denial on December 20, 2022, describing issues with the application that would likely preclude approval and identifying the information or actions necessary to obtain approval. MOU at Section A(2)(k).
- Staff issued a notice of denial on December 21, 2022. In addition to minor revisions to the Phase 2 final plat and temporary easements, Staff stated that prior to approval of the bond quantities and final approval of the plat, the applicant must provide approvals, agreements, or easements to demonstrate that City Heights had the legal right or authority necessary to construct the offsite improvements.
- As authorized by the MOU, the applicant requested suspension on December 21, 2022. The intent of suspension is to allow the applicant additional time to gather the requested information. During suspension, the review timeline is tolled. Suspension ends when the parties agree in writing to continue processing the application or the City determines to issue a final determination. MOU at Section A(2)(k).
- On February 22, 2023, applicant’s attorney requested the City approve the final plat with conditions requiring the offsite approvals to be bonded prior to receiving a certificate of occupancy. Staff did not agree to this request because without those items in place, Staff cannot certify that appropriate provisions are made for water and access, as required by RCW 58.17.110.
  - Specifically, appropriate provisions have not been made for the public health, safety, and general welfare including for streets, roads, and potable water supplies.
  - Absent these assurances, the public use and interest will not be served by the platting of this subdivision.
- At various times in late 2022 and 2023, the City Attorney explained to applicant’s attorney that Staff could not recommend approval of the Phase 2 final plat application until concerns relating to the Offsite Scope were satisfied because Staff did not feel it was appropriate to bond for outside agency approvals or other entitlements necessary to perform the construction.
- Staff advised of the following concerns:
  - Zone 3 Water Main:

- a. Documentation of approval from WSDOT for utility placement in right of way
    - b. Documentation of Deneen family approval of the proposed alignment
    - c. Documentation of Bonneville Power Administration (BPA) and Puget Sound Energy (PSE) approval of the alignment
  - Montgomery Interim Access:
    - a. Documentation of BPA and PSE approval of the alignment
    - b. Resolution of the litigation or other conclusion of disputed property interest claims related to the Lancaster and Hunter parcels
    - c. Documentation of Kittitas County grading permit approval
  - On March 2 and March 3, 2023, the applicant's attorney again requested the City make a decision on the Phase 2 final plat. The City responded again that City Staff would not issue an approval until the listed concerns were satisfied.
  - An Arbitrator has been involved in the resolution of earlier disputes between City Heights and the City related to development of the property. The Arbitrator appointed a Special Master to make certain decisions. City Heights requested that the Special Master direct the City to approve the Phase 2 final plat application. The City objected generally for the reasons set forth in this Staff Report. The correspondence with the Special Master, including substantial written briefing, occurred throughout February and March 2023. Attached hereto and incorporated by this reference are the submittals by the parties to the Special Master.
  - On April 11, 2023, the Special Master issued a decision denying City Heights' request to approve the Phase 2 final plat application. In particular, the Special Master determined:

City Heights is unable, at this time, to establish the legal availability of the requisite water utility access and secondary road access. Accordingly, and for the reasons set forth in detail above, the request of City Heights is **DENIED**. I make no finding as to the placement of this matter before the City Council, and leave it to the City's discretion to act in accordance with the DA, MOU, and the City's applicable ordinances.
- Attached hereto and incorporated by this reference is the opinion of the Special Master.
- The Arbitrator reviewed the Special Master's decision. On April 19, 2023, the Arbitrator stated, "I have reviewed the emails and the Special Master's Opinion. Because the parties do not seek approval of the Opinion, I take no action at this point."
  - On May 5, 2023, the City released the agenda for the May 8, 2023 City Council Meeting. The agenda included, as requested by City Heights, a new business item for City Council consideration of the Phase 2 final plat. Because the applicant had not demonstrated consistency with the Phase 2 preliminary plat provisions of approval, as confirmed by the Special Master, the recommendation was to deny the final plat application.
  - On May 6, 2023, the applicant's attorney emailed a letter to the City Council expressing their "deep concern and disappointment" that the City would consider denying the final plat. The letter also stated that a denial decision coming from the City Council would be improper as the City Council is the appeal body for this type of decision. The letter stated the Planning Director should have the decision making authority, whose decision is then appealable to the City Council. The letter stated that "when the applicant believes [the recommendation points made by the Special Master] are complete, [the applicant] will notify the City."
  - On May 8, 2023, the City Council removed consideration of the Phase 2 final plat from the agenda.

- On May 10, 2023, the applicant's attorney emailed a letter to the City's attorney team which stated the "Phase 2 final plat is ready for consistency review and approval under the Development Agreement" and that the applicant has met all of the requirements related to the Offsite Scope. The letter indicated that the Offsite Scope approvals have been secured by City Heights and conveyed to Staff.
- Staff has not received any documentation that the Offsite Scope approvals have been obtained by City Heights. In accordance with Appendix Q of the Development Agreement and Section A(2)(k) of the MOU, the City Heights Planner makes the following consistency determination and decision.

**Determination of Consistency:** Staff finds that the applicant has not demonstrated compliance with the provisions of approval for the Phase 2 subdivision, specifically the listed concerns relating to the Offsite Scope. Staff is not in possession of any of the Offsite Scope approvals which were confirmed by the Special Master as being necessary prior to final approval.

**Decision:** Staff denies the Phase 2 final plat application based upon the determination that the applicant has not demonstrated consistency with the Phase 2 preliminary plat provisions of approval, including as reviewed and confirmed by the determination of the Special Master.

  
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City Heights Planner

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May 18, 2023  
Date

**Attachments** (accessible on the City Heights Phase 2 webpage:  
<https://cityofcleelum.com/city-services/planning/city-heights/>):

- Final Plat
- Exhibit A – Copies of the documents submitted to the Special Master by City Heights
- Exhibit B – Copies of the documents submitted to the Special Master by the City
- Exhibit C – Copy of the Special Master Opinion
- Exhibit D – Copy of the letter sent to City Council by the applicant on May 6, 2023
- Exhibit E – Copy of the letter sent to City's attorney team on May 10, 2023

**Appeal Period:** In accordance with the provisions of the City Heights Development Agreement Appendix Q, appeals of this Phase 2 final plat denial must be filed with the Cle Elum City Council within 15 days of the publication of this Notice of Decision. This decision will be published on May 18, 2023. Applications to appeal this decision must be submitted to the City Clerk and shall include:

1. The name, mailing address, and contact information of the petitioner(s).
2. The name, mailing address, and contact information of the petitioner's attorney, if any.
3. A separate and concise statement of each alleged error in the Consistency Determination.
4. A statement of the facts and evidence on which each alleged error is based.
5. A statement and description of the type and extent of relief requested.
6. Payment of the application appeal fee as required by the City Fee Schedule.