

INTRODUCTION

This is a highly controversial project. Michael Jackson (or “Applicant”) has proposed a 10-acre campground within the heart of prime residential land. The impacts on adjacent residences are significant.

This matter comes before you with one primary component: (1) a conditional use permit application for authorization of a 10-acre “campground” to include 30+ cabins, one 3000 sqft Lodge, and a 3000 sqft Maintenance Building within within the Rural Recreation (R-R) zoning district.

KCC 17.08.155 - Kittitas County has classified “campgrounds” as any parcel or tract of land under the control of any person, organization, or governmental entity wherein two (2) or more recreational vehicle, recreational park trailer or other camping unit sites are offered for the use of the public or members of an organization. Very specific standards and guidelines have been developed with respect to the review of conditional use permit applications within the rural area with particular consideration given to (1) consistent with the goals, policies, and objectives of the Kittitas County Comprehensive Plan; and (2) mandates of the Growth Management Act (GMA) regarding preservation of “rural character”. These special requirements supplement common standards set forth in KCC 17.60A.015 requiring determinations that the proposed use is not injurious to the character of the surrounding neighborhood; there is not an unreasonably detrimental impact to the economic welfare; the proposed use is adequately serviced by existing facilities; material impacts of the development are mitigated whether environmental or otherwise; the use is compatible with existing neighboring land uses; and the use is consistent with the intent and character of the applicable zoning district. An applicant has the burden of establishing each of the required elements in order to support its proposed project. A failure to meet any one element is determinative.

The concept of a “conditional use” is that certain uses may not be appropriate at all locations. The review process focuses upon the particular use at a specific location with site considerations and surrounding environment being significant components of the analysis. Public comment is entitled to “substantial weight” and of particular significance in this proceeding. The opposition is unanimous and significant in scope and content. This is simply the wrong location for the proposed project.

APPLICABLE ZONING AND DEVELOPMENT STANDARDS

The project site is located in the heart of prime residential real estate. The purpose and intent of the R-R zoning district is as stated below:

- 17.30.010 Purpose and intent. - The purpose and intent of the Rural - Recreation zone is to provide areas where residential development may occur on a low-density basis or in residential clusters. A primary goal and intent in siting R-R zones will be to promote rural recreation residential development associated with the many natural amenities found within Kittitas County. (Ord. 2013-001, 2013)

The grant or denial of a special or conditional use is adjudicative in nature. *Development Services of America v. City of Seattle*, 138 Wn.2D 107, 115 (1999) (affirming denial of conditional use permit).

Kittitas County has adopted standards and criteria for conditional use permit applications. See KCC 17.60A.015. An applicant has the burden to establish the following requirements:

1. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
2. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:
 - A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation, and drainage structures, refuse disposal, water and sewers, and schools; or
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.
6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands.
 - B. Preserves "rural character" as defined in the Growth Management Act (RCW [36.70A.030\(20\)](#)).
 - C. Requires only rural government services; and
 - D. Does not compromise the long-term viability of designated resource lands.

Each of these elements must be established for issuance of a conditional use permit. Where the zoning code establishes specific standards, the applicant bears the burden of proof. *Sunderland v. City of Pasco*. 127 Wn.2d 782, 796-97 (1995).

- (a) Compliance with Comprehensive Plan and GMA. The conditional use permit review criteria add two significant components: (1) a finding and determination of compliance with goals, policies, and objectives of the Kittitas County Comprehensive Plan; and (2) assurance that “rural character”, as defined by the Growth Management Act, is preserved.
- a. The courts have set forth the well-established rule as follows:
 - i. The KCC explicitly requires that a site-specific rezone application be compatible with the comprehensive plan. *...If a zoning code explicitly requires that all proposed uses comply with a comprehensive plan, then the proposed use must comply with both the zoning code and comprehensive plan.*
 - ii. *Woods v. Kittitas County*, 162 Wn.2d 597, 614 (2007); and *Cingular Wireless, LLC v. Thurstan County*, 1312 Wn. App. 756, 770 (2006).

- (b) Compliance With “Rural Character” Requirements Of GMA. KCC 17.60A.015 adds a second significant component to the review - conditional uses must preserve “rural character” as defined by Growth Management Act – RCW 36.70A.030(35). GMA defines “rural character” as follows:

"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment.
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.
- (c) That provides visual landscapes that are traditionally found in rural areas and communities.
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat.
- (e) That reduces the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

The statutory definition of “rural character” is supplemented by comprehensive plan directives which define “rural character” as follows:

- Open space and visual and natural landscape predominate over the built environment.
- Opportunities exist for transitional rural lifestyle and rural based economies.
- Spaces and development are compatible with wildlife habitat.
- Undeveloped land is not converted to development of sprawl and low density.
- Activities generally do not require extension of urban governmental services.

- Land use is consistent with protection of surface and groundwater flows and recharge/discharge areas.

Kittitas County Comprehensive Plan 8-2 – “Rural development is permitted ...at levels that are consistent with the preservation of rural character and the requirements of the rural environment.”

Since these requirements are determined in the context of a specific permit application, a generalized assumption that all potential “conditional uses” are appropriate and consistent with the “rural character” is incorrect and a misapplication of the law. A conditional use application is adjudicative in nature and may be denied, approved, or conditionally approved.

- (c) Community Comment Is to Be Given Substantial Weight in Consideration of a Conditional Use Permit. While a conditional use permit may not be denied *solely on community displeasure*, it is recognized that community input and comment is an appropriate and significant element in review of conditional use permit applications. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756 (2006) (holding that Hearing Examiner properly denied a conditional use permit upon findings regarding adverse aesthetic impacts and incompatibility with neighborhood character). The governing rule was set forth in *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 797 (1995).

“[W]hile the opposition of the community maybe given substantial weight it cannot alone justify a local land use decision.”

The courts have subsequently reaffirmed this rule. See e.g., *Concrete Nor-West v. Western Washington Growth Management Hearings Bd.*, 185 Wn. App. 745, 759 (2015). Testimony provided by neighbors opposing the conditional use permit is entitled to *substantial weight* when considering the application. These views are particularly compelling on matters related to impacts on the “character of the surrounding neighborhood; impacts on economic welfare; and compatibility with existing neighborhood.

2. Application Does Not Comply with Comprehensive Plan Goals, Policies and Objectives

The Kittitas County Comprehensive Plan designates the subject property as Rural Recreational. These lands often include scenic roadways, vistas, ski and hiking areas, and recreational and seasonal recreation residences. They include resort activities and provide limited commercial services to tourists and seasonal residents where rural character is preserved. Rural Recreation lands may be located in flood or other hazard areas where fishing and outdoor activities are prevalent.

Kittitas County has established goals, policies, and objectives (GPOs) to guide activities within rural recreation lands. The following GPOs are applicable in the consideration of this application:

GPO 8.1 – Rural lands are characterized by a lower level of services; mixed residential, agricultural, and open space uses: *broad visual landscapes* and parcels of varying sizes, a variety of housing types in small unincorporated communities.

GPO 8.3 The County should promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.

GPO 8.6 Limited Areas of More Intensive Rural Development, or LAMIRDs, within Kittitas County are small unincorporated communities generally providing limited commercial services, a post office, a school, agricultural services, and a variety of housing types.

GPO 8.15 Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

GPO 8.17 Land use development and conservation tools to prevent sprawl within the Rural area will be researched and adopted when it is determined that such tools protect the unique Kittitas County rural character.

GPO 8.19 Develop buffer standards and regulations that will be used between incompatible rural uses.

GPO 8.20 Cottage and home occupations which are rural in nature should be encouraged within all rural land use designations and regulations. Impact upon surrounding environments and upon existing public services shall be considered when such industries are proposed.

GPO 8.21 Kittitas County will provide criteria within its zoning code to determine what uses will be permitted within rural zone classifications in order to preserve rural character.

Comprehensive plan provisions have been implemented through adoption of the zoning ordinance. KCC 17.30.010 sets forth the “purpose and intent” of the Rural Recreation R-R zoning district as follows:

The purpose and intent of the Rural - Recreation zone is to provide areas where residential development may occur on a low-density basis or in residential clusters. A primary goal and intent in siting R-R zones will be to promote rural recreation residential development associated with the many natural amenities found within Kittitas County. (Ord. 2013-001, 2013)

There can be no serious question that the zoning and comprehensive plan directive is to preserve low density residential development.

The Outpost project proposal converts multiple prime rural residential parcels to a commercial campground. The proposal is visually and esthetically inconsistent with the adjoining properties; dominates over the natural landscape and neighboring residential parcels; introduces adverse impacts to neighboring residential parcels; and is inconsistent with rural recreation residential development. The decision-making process balances a commercial proposal within multiple rural residential communities against a commitment to preserving and promoting rural recreation residential development associated with the area. And significantly, the project will have a direct impact on the adjacent properties.

3. Project Proposal is Not Consistent With “Rural Character” Requirements Contained in Growth Management Act (GMA)

KCC 17.60A.015(7) specifically requires that a conditional use proposed outside of Urban Growth Areas

(UGAs) preserve the “rural character” as defined in the Growth Management Act (RCW 36.70A.030(35)). In applying the guidelines related to “rural character” the following observations are applicable:

The Outpost states that they are providing “*additional recreational accommodations to those looking to recreate in Upper County. We intend to create an environment that embraces the beauty of the area and is not detrimental to the surrounding neighbors and communities*”. We respectfully disagree. In fact, it is the opposite:

(35) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment.

Comment:

This project dominates over the natural landscape and vegetation, in fact, the vegetation will be most cleared. The square footage of the project area covers nearly all the land in the project zone and is unlike any other residential property in the area.

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas.

Comment:

This project in no way fosters rural lifestyles and the proposed use is detrimental to the surrounding parcels by creating a sprawling high-density area of cabins capable of hosting over 120 adults, each bringing with them dirt bikes, side by sides, snowmobiles, etc. located in between and amongst residential homes. The noise in such a condensed area alone should be enough to prevent this sprawling high-density development from further construction. Also, no additional local jobs are created by this project.

(c) That provide visual landscapes that are traditionally found in rural areas and communities

Comment

This project will be detrimental to the visual landscape and is obviously not going to provide a rural visual landscape. This is not traditional in any way, shape, or form.

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat.

Comment

Clearing the land in this way will prevent the abundant wildlife that currently calls this area home from accessing the site for food or shelter, whether or not the wildlife is endangered or rare.

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development

Comment

This project does not reduce the inappropriate conversion of undeveloped land into sprawling, low-density development. It converts the area into a massive campground with a 3000 sqft meeting hall.

(f) That generally do not require the extension of urban governmental services; and

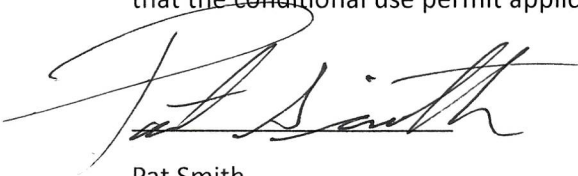
(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

Comment

The natural surface flows evident in the topographical maps and surveys will be altered, but as yet we are not told how. This project will have roadways, large areas for parking, and 32+ structures that assuredly change the natural surface flow.

CONCLUSION

I/we contemplate the extensive and personal testimony of the surrounding homeowners with respect to this unique residential community and the impacts of the proposed project. There can be no serious question with respect to the character and historic traditions of this prime residential neighborhood and surrounding area. Those traditions and environments are intended to be protected by the specific directives of a zoning ordinance, comprehensive plan, and statutory directives. I/we respectfully request that the conditional use permit application for campground be denied at this location.



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