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AUG 26 2019)
CHELAN COUNTY)
COMMUNITY DEVELOPMENT)

Tim & Becky Scott

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COMMUNITY DEVELOPMENT

FINDINGS OF FACT

- Findings of Fact/Conclusions of Law/Decision/Conditions of Approval
P 2019-002, Scott Orchard Cluster Subdivision
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14. The property to the west of the subject property is Fairview Canyon Rd., a county right of way and agriculture and is zoned Commercial Agricultural Lands (AC).
15. The property to east of the subject property is undeveloped hillside and is zoned Commercial Agricultural Lands (AC).
16. The applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped February 25, 2019. Pursuant to Chelan County Code Section 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply.
17. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150625C, the subject property does not contain identified 100 or 500-year flood plain or associated floodway. Therefore, Chelan County Code 11.84, Frequently Flooded Areas Overlay District does not apply.
18. According to the Chelan County GIS mapping, the property contains potential geologic hazardous areas. The applicant submitted a Geological Site Assessment, dated February 12, 2019 prepared by Nelson Geotechnical Associates, INC. The report includes several recommendations for construction which should be adhered to for the design and construction of the proposed subdivision.

Pursuant to Chelan County Code Chapter 11.86, a note on the final plat mylar should be required, identifying this subdivision as being located in a potential geologically hazardous area.

19. Pursuant to the National Wetlands Inventory Map the subject property does not contain known wetland(s). Therefore, Chelan County Code Chapter 11.80 does not apply.
20. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, streams were indicated on the subject property. A stream typing report was prepared by Chelan County Natural Resources Department dated May 31, 2018. The report concluded that the stream running along the western edge of the subject property is designated as a non-fish seasonal (Ns) stream. Therefore, the provisions of Chelan County Code Chapter 11.78 for riparian areas, do apply.

Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps and Chelan County Fish & Wildlife Overlay District, Chapter 11.78, the subject property does contain mule deer habitat. Therefore, the provisions of Chelan County Code Chapter 11.78 do apply.

21. Comments from the Confederated Tribes of Colville Reservation, dated June 5, 2019, indicated that the subject property is not located near existing resources but does fall within a 'high probability' area for encountering cultural resources. Therefore, staff is making a recommended Condition of Approval that an inadvertent discovery plan would be required at time of building permit submittal.

Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resources is maintained.

22. Permits and applications on record for the subject property include:

- 22.1 ST 2018-123—stream typing report
- 22.2 BLA 2017-321—2 Lot BLA, recorded November 8, 2017 under AFN: 2468340
- 22.3 BP 940822—building permit for single family residence

23. In May of 2019, a pre-application meeting was held to discuss the proposed cluster subdivision.

24. The proposed subdivision fronts on Fairview Canyon Road. Fairview Canyon is a 40ft. right of way and is classified as a Rural Local Access Road in the county road system. Fairview Canyon Road consists of single travel lanes for both directions with no curb, gutter, or sidewalk. Fairview Canyon Road is a 20ft. to 22ft. paved roadway with 2ft. gravel shoulders.
25. The applicant is required to submit a sight distance analysis for the existing/proposed access point off Fairview Canyon Road.
26. With the development, a new internal driveway is proposed. The proposed driveway will be required to be built to meet a Shared Residential Driveway standard with an emergency turnaround. In response, the County asked the developer if they would like to respond to these concerns. On November 15, 2017, the developer submitted a "re-issue of the project narrative".
27. The comment letter from Chelan County Public Works, dated March 28, 2019, states a private stormwater drainage system is required with an Operation and Maintenance Agreement of the drainage system and recorded with the final plat.
28. Domestic water will be provided as follows:
 - 28.1 Lots 1 and 2 via the existing private well on Lot 1, well tag number BKB400.
 - 28.2 Lots 3 and 4 will share the existing private well located on Tract A.
 - 28.3 Lot 5 will share the existing well on the adjacent property, 3205 Fairview Canyon Road; Grant of Access to Well and Water Easement, recorded under AFN(s): 2469169 & 2469581.
29. Sanitation will be provided via on-site septic systems proposed for Lots 1-3 & 5. Lot 4 will utilize the existing on-site septic system.
30. Comment letters from Chelan County PUD, dated June 13, 2019 and June 14, 2019, states electrical service is available to the subject property. Line extensions will be necessary. Easements will be required where utilities are located on private property and outside of a previously recorded easement.
31. The district has an overhead/underground electric system easement on the subject property which will be required to be delineated on the final plat and noted with AFN: 9308200033.29. The project will be served electrical power by Chelan County Public Utility District. Line extensions and easements be required.
32. The subject property is located within the Peshastin-Icicle Irrigation District.
33. Prior to final approval of this development, the applicant must obtain a release from Peshastin-Icicle District which states that irrigation shares have been segregated.
34. Noise impacts are addressed in Chelan County Code Chapter 7.35.
35. The applicant submitted an environmental checklist on February 25, 2019. Pursuant to WAC 197-11 process and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed, and a Determination of Non-significance (DNS) was issued on July 15, 2019. The SEPA Checklist and DNS are included within the file of record and adopted by this reference.
36. The Notice of Application was referred to agencies and departments on June 4, 2019 and surrounding property owners within 300ft. excluding 60ft. of right-of-way with comments due June 18, 2019. The following agencies provided comments:
 - 36.1 Chelan County Assessor responded on June 4, 2019.

- 35.2 Chelan County Fire Marshal responded on June 18, 2019.
- 35.3 Chelan-Douglas Health District responded on June 10, 2019.
- 35.4 Chelan County Public Works responded on June 18, 2019.
- 35.5 Chelan County PUD responded on June 13, 2019 & June 14, 2019.
- 35.6 Confederated Tribes of the Colville Reservation responded on June 5, 2019.
- 35.7 Department of Ecology responded on June 13, 2019.
- 36. The following agencies were notified but did not respond:
 - 36.1 Chelan County Building Official
 - 36.2 WA Department of Fish & Wildlife
 - 36.3 Fire District #6
 - 36.4 Peshastin-Icicle Irrigation District
 - 36.5 Cashmere School District
 - 36.6 WA Department of Archaeology & Historic Preservation
 - 36.7 Yakama Nation
- 37. Public Comments have been received by the following:
 - 37.1 Garrett Orchards, LLC (Ernie & Loretta Garrett) responded on June 17, 2017.
- 38. The application materials were submitted on February 25, 2019.
- 39. Determination of Completeness was issued on May 29, 2019.
- 40. SEPA DNS was issued on July 15, 2019.
- 41. Notice of Public Hearing was issued on August 9, 2019.
- 42. The Comprehensive Plan has been reviewed. Specifically the goals and policies related to the Commercial Agricultural Lands Comprehensive Plan designation for consistency with residential and agricultural land uses.
- 43. The Hearing Examiner finds that the proposed subdivision, as conditioned, is consistent with the Chelan County Comprehensive Plan.
- 44. The project is consistent with Chelan County Code (CCC) Section 11.30.020 in the following respects:
 - 44.1 The proposed lots would be for residential use. The applicant is proposing lots ranging in size from 0.79 acres to 5.03 acres with the average lot size of approximately 1.85 acres through a cluster subdivision. All proposed lots exceed the minimum lot width of 150 ft. at the front building line. Building setbacks, height, and lot coverage would be reviewed at the time of building permit application.
 - 44.2 The Hearing Examiner finds that the proposed cluster subdivision, as conditioned, is consistent with the provisions of Chelan County Code Section 11.30.020.
- 44. The project is consistent with CCC Section 12.04.020 in the following respects:
 - 44.1 As submitted, the proposed cluster subdivision is consistent with the provisions of this section.

45. The project is consistent with CCC Chapter 12.08 in the following respects:
- 45.1 The proposed subdivision is to be named Scott Orchard Cluster Subdivision, which is not similar to the name of any other subdivision in the county.
 - 45.2 The proposed lots were reviewed for consistency with the cluster subdivision standards and appear that they are of an adequate size to accommodate the dimensional standards of the AC zoning district. Each lot is provided access by an access easement from Fairview Canyon dedicated through the proposed plat.
 - 45.3 An Engineering Geologic Hazard Assessment prepared by Nelson Geotechnical Associates, Inc. dated February 12, 2019 was submitted with the application. Staff recommended as a condition of approval that a note be placed on the face of the plat stating the subject property is within an erosion hazard area and that all development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended as well as compliance with the recommendations of the Engineering Geologic Hazard Assessment prepared by Nelson Geotechnical Associates, Inc. dated November 2, 2017 or as amended with a site specific geological site assessment.
 - 45.4 Based on the site plan of record, dated May 29, 2019, the proposed subdivision would not result in barrier to the development of the adjacent lots.
 - 45.5 Pursuant to RCW 58.17.255 and WAC 332-130-040, all easement locations are required to be shown on the final Short Plat. Separate instruments recorded with the Chelan County Auditor should be referenced on the final Short Plat. Easements will be reviewed with blueline submittal.
 - 45.6 The subject property is within Fire District 6. The proposed subdivision and all future building permits must conform to all applicable requirements of the International Fire Code and International Building Code administered by the Chelan County Fire Marshal.
 - 45.7 Comment letter from Chelan County Public Works, dated June 18, 2019, states that the proposed subdivision must comply with the stormwater standards per Chelan County Code Chapters 13.12, 13.14, 13.16, and 13.18.
46. The project is consistent with CCC Chapter 12.12 in the following respects:
- 46.1 Cluster subdivisions may occur with the AC zoning district on parcels greater than 150% of the minimum required area and at least result in two buildable lots and one open space tract. The applicant is proposing 5 lots and one open space tract on approximately 42.06 acres. The proposed open space tract would be developed consistent with Chelan County Code, Section 12.12.050(4)(B), for individually owned open space for agricultural use. The proposed open space tract A does have existing storage buildings for irrigation supplies. The existing structures cover less than 10% of the open space tract A.
 - 46.1 Based on the site plan of record, the lots are grouped and configured in a way which would allow for the retention of agricultural lands for production.
 - 46.3 The proposed open space tracts would be approximately 32.47 acres, which exceeds the requirement of 70% of the subject property.
 - 46.4 The density allowed by the cluster subdivision provisions for the subject property is 7 buildable lots $[(42.06/10) \times 150\% = 6.3 \text{ rounds to } 7]$; the applicant only applied for 5 buildable lots.
 - 46.5 The open spaces tract does apply to the density pursuant to CCC Section 12.12.040(3). The applicant did not apply for bonus density.

- 46.6 The proposed lots sizes range for 0.79 acres to 5.03 acres. Site evaluations were provided by Tower Designs, Inc. which determined based on the test holes that the site is suitable for subdivision utilizing on-site sewage disposal systems. The Chelan-Douglas Health District provided comment that proposed lots meet or exceed this minimum size requirement of on-site sewage disposal system.
- 46.7 Per Chelan County Code Section 12.12.050(3)(B), setbacks for the portion of the development that is on the perimeter of the project area shall be setback as required by the underlying zone. The AC zoning district requires a 100ft. setback from property zoned commercial agricultural lands for dwelling units; based on the site plan of record, there appears to be adequate building area outside of the 100ft. perimeter setback from commercial agricultural lands zoning. Additionally, setbacks for structures internal to the development may be altered to the extent as allowed by Chelan County Code Title 11 Zoning. Staff is recommending as a condition of approval, a notice to title be recorded prior to the finalization of the proposed subdivision, that would allow for the required 100ft. setback from internal property lines to be waived to the minimum standards as allowed per Chelan County Code Section 11.30.020(5).
47. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended **APPROVAL of PLAT 2019-002**, subject to the proposed conditions of approval.
48. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
49. An open record public hearing after legal notice was provided was held on August 21, 2019.
50. Appearing and testifying on behalf of the applicant was Norm Nelson. Mr. Nelson testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Nelson indicated that the applicant concurred with the staff report findings and conclusions. The applicant had no objection to any of the proposed conditions of approval.
51. No member of the public testified at this hearing.
52. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
53. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. As conditioned, this Plat is consistent with the Chelan County Zoning Code.
3. As conditioned, this Plat is consistent with the Chelan County Comprehensive Plan.
4. The requirements of the Revised Code of Washington, the State Environmental Policy Act and WAC 197-11 have been satisfied.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, P 2019-002 is hereby **APPROVED**, subject to the conditions noted below.

CONDITIONS OF APPROVAL

All conditions imposed herein shall be binding on the "Applicant." "Applicant" shall mean terms, which include the owner or owners of the property, heirs, assigns, and successors.

CHELAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

1. Pursuant to RCW 58.17, the project shall conform to all applicable local, state, and federal regulations, statutes, rulings, and requirements. The proposal shall be subject to approval that may be required under permits licenses or approvals by any other local, state, or federal jurisdictional agency.
2. All conditions imposed herein shall be binding on the Applicant. "Applicant" shall mean terms, which include the owner or owners of the property, heirs, assigns and successors.
3. Pursuant to Chelan County Code Section 12.24.040, the final Plat shall be designed in substantial conformance with the Preliminary Plat of record, date stamped May 29, 2019, on file with the Chelan County Department of Community Development, except as modified herein. No increase in density or number of lots shall occur without a re-submittal of a Plat application.
4. Pursuant to Chelan County Code Section 12.24.015 and RCW 58.17.140, all requests for final Plat approval must be submitted within five (5) years from the date of preliminary approval, unless an extension is granted.
5. Pursuant to RCW 58.17.255 and WAC 332-130-040, all easement locations are required to be shown on the final Plat. Separate instruments recorded with the Chelan County Auditor shall be referenced on the final Plat.
6. Pursuant to RCW 84.56.345, all taxes, delinquent taxes, and assessments that are required to be paid by the Chelan County Treasurer shall be paid prior to final Plat recording.
7. Pursuant to Chelan County Code Section 11.30.020, the following note shall be placed on the final Plat:
 - 7.1 "The subject property is located within or near designated long-term commercial agricultural lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration"
8. Pursuant to Chelan County Code Section 11.30.020(1), the minimum lot size may be modified one time for a cluster subdivision. The following note shall be placed on the final Plat:
 - 8.1 "The lots associated with this Plat shall not be further subdivided utilizing the cluster subdivision criteria."

9. Pursuant to Chelan County Code Section 11.78.240, the following note shall be placed on the final Plat:
 - 9.1 "The subject property is within identified mule deer habitat and the requirements of the Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas apply, as amended."
10. Pursuant to Chelan County Code Section 11.78.090, the following note shall be placed on the final Plat:
 - 10.1 "Any development within the riparian buffer of the non-fish seasonal (Ns) stream identified on the subject property shall meet the setbacks from the Ordinary High Water Mark as required pursuant to Chelan County Code 11.78 Fish and Wildlife Habitat Conservation Areas Overlay District, as amended."
11. Pursuant to Chelan County Code Section 11.86.080, the following note shall be placed on the final Plat:
 - 11.1 "All or part of this area may be located within a suspected or known geologically hazardous area. Subsequent development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended; and the Engineering Geologic Hazard Assessment prepared by Nelson Geotechnical Associates, Inc. dated February 12, 2018 or with a site-specific geological site assessment."
12. Pursuant to Chelan County Code Section 12.12.050(3), a notice to title shall be recorded prior to the finalization of the proposed subdivision, that would allow for the required 100ft. setback from internal property lines to be waived to the minimum standards as allowed per Chelan County Code Section 11.30.020(5).
13. Pursuant to Chelan County Code, Section 12.12.050, the open space accumulated shall be clearly labeled and numbered as a tract with an approved open space management plan; the following language inserted on the final Plat filed for record under this chapter:
 - 13.1 "This tract is held in reserve as open space designated for agricultural use on which a variety of commercial activities (accessory dwelling and accessory uses normally incidental to single family dwellings within agricultural districts) may occur that are not compatible with residential development for certain periods of limited duration. Open space set aside for agricultural purposes may allow improvements that are associated with the agricultural operations, such as barns, outbuildings, storage facilities, and other related facilities provided they are incidental and do not take up more than ten (10) percent of the open space. Commercial operations associated with agricultural activities shall be prohibited. This tract is held in reserve as open space with provision for building consistent with the approved open space management plan AFN _____, or as legally amended."
14. Pursuant to Chelan County Code Title 12, the following note shall be placed on the final Plat:
 - 14.1 "Chelan County is not responsible for notification or enforcement of covenants to deed restriction or reservations affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property. Applicant /owner assume all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations."
 - 14.2 "Based on historical agricultural use of this land, there is possibility the soils contains residual concentrations of pesticides. The WA State Dept. of Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the MTCA cleanup levels, the WA

State Dept. of Ecology recommends that the potential buyers be notified of their occurrence.”

15. Pursuant to the Revised Code of Washington, the following notes shall be placed on the final Plat:
 - 15.1 “Noxious weed control is the responsibility of the individual lot owners, per RCW 17.10.140, as amended.”
 - 15.2 “If any Native American grave sites or archaeological resources are discovered or excavated, the owner/developer/contractor shall stop work immediately and notify Chelan County Department of Community Development and the Washington State Department of Archaeology and Historic Preservation in conformance with RCW 27.53.020. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample of this plan may be obtained from Chelan County Community Development.”
16. Prior to final approval of this subdivision, applicant must obtain a release from Peshastin-Icicle Irrigation District which states that irrigation shares have been segregated. RCW 58.17.310 prohibits any city, town or county from approving a final plat for property in the District unless the entity has provided an irrigation water easement for each parcel of land. Rights-of-way must be shown on the final plat submitted for recording.
17. Pursuant to Chelan County Code Section 12.08.030, the applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1. All easements shall be denoted on the final Plat.
18. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Agency Comments dated June 18, 2019.
19. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan-Douglas Health District memorandum dated June 17, 2019.
20. The subject property and final Plat shall conform to the comments and conditions of approval as found in the Chelan County Public Works Department Agency Comments dated February 21, 2019.

Approved this 22nd day of August, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.