

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:

AA 2019-001

Green Tail, LLC

RECEIVED

MAY 13 2019

DECISION ON ADMINISTRATIVE

APPEAL

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

FINDINGS OF FACT

1. A Certificate of Exemption application was received from the Applicant, Green Tail, LLC, on December 10, 2018 and was denied February 21, 2019 by Dave Kuhl, Director of Community Development.
2. On March 4, 2019, Matthew Hitchcock agent for the owner properly filed an Administrative Appeal request.
  - 2.1 Chelan County Code Section 14.12.010 requires submittal within ten working days.
    - 2.1.1 The agent to the owner's request was timely filled.
  - 2.2 Chelan County Code Section 14.12.010 requires payment of all fees.
    - 2.2.1 The agent to the owner paid all associated fees, \$608.00 to Chelan County Community Development.
3. Applicant Statement regarding Finding of Fact 1.1: "The interpretation in AGO 1998 No. 4, expressly states that the Counties may honor plats filed prior to 1937... the Washington State Supreme Court permitted a property owner to aggregate the small lots in a pre-1937 plat without requiring replatting or review by the county under current zoning law. The Court viewed the aggregation as a boundary line adjustment... The Department fails to account for AGO 1998 No. 4 (1998) and as a result the Department's analysis is incomplete which leads to the Department's erroneous conclusion."
  - 4.1 Staff Response: Based on the AGO 1998 No. 4, the county ultimately has the discretion to impose that the pre-1937 plat has to meet current subdivision standards. Additionally, the subject property which is a portion of the original "Plat of Dover" has gone through the land division process with Chelan County via a Certificate of Exemption (COE 2016-177) for division by intervening ownership (county road).
4. Applicant Statement regarding Finding of Fact 1.1: "Additionally, the Department's analysis is apparently based, at least in part, on the factually incorrect assumptions that all of the land included in the Plat of Dover is undeveloped and owned by the appellant"
  - 5.1 Staff Response: Per materials submitted with the Certificate of Exemption, the owner's agent states that Mr. Norell (original owner of "Plat of Dover"), was required to record the Plat prior to selling the individual lots but he never sold any of the individual lots created in the Plat. Since he never sold any lots, the recording requirement was never triggered. The application materials state that none of the lots were sold, which leads to

the Finding of Fact 1.1. This determination was made off of the submitted application materials; staff cannot be at fault for incorrect information submitted by the owner's agent with application.

- 5.2 Additionally, being as the property was purchased from Barbara Gross, a personal representative of Alice Faulkenberry, which was then sold to Green Tail, LLC, it is clear that the subject property had been sold after the approval of the Plat of Dover. However, each time the subject property had been sold, the legal description referencing the Plat of Dover was never mentioned. The buyers were purchasing a portion of the Government Lot or now, a parcel created through the Certificate of Exemption. Therefore, it is not consistent with the AGO 1998 No. 4 decision.
5. Mr. Kuhl found that the application materials were inconsistent, therefore, leading to the Department's denial of the application
6. Applicant Statement regarding Finding of Fact 1.2: "The Department states that 'Pursuant to Chelan County Code Chapter 11.14, the lot as outlined in the application does not meet the minimum lot size' ... Presumably, this is why the Department denied the application..."
  - 8.1 Staff Response: As stated in the application materials submitted with the Certificate of Exemption, starting in 1937 plats and subdivision were required to be submitted to county authorities for approval and also requiring counties to refuse plats that were not properly approved per Ch. 186, Laws of 1937. Chelan County passed an ordinance that allowed county commissioners to review and approve pre-1937 plats so long as they are consistent with current land use regulations; this process is now codified as CCC Section 12.14.050(6). Per CCC Section 12.14.040, applications shall follow the procedures set forth in Chapter 12.02 and 12.04. CCC Section 12.04.010(4) states, all land divisions shall meet all local and state law. Applications will be reviewed for compatibility with the Chelan County comprehensive plan and based on the criteria set forth in this title and Title 11: Zoning. Per Finding of Fact 1.2 of COE 2018-435, the lot as outlined does not meet the minimum lot size of the Rural Residential/Resource 2.5 zoning district.
9. Applicant Statement regarding Finding of Fact 1.2: "The Department indicated that the application is incomplete. The Department is barred from asserting that the applicant is incomplete. Pursuant to CCC 14.08.030, the department is required, within 28 days, to provide the applicant with a written determination that the application was either complete or incomplete."
  - 9.1 Staff Response: Pursuant to 12.14.020, Certificate of Exemptions have their own timelines regarding processing. The administrator shall endeavor to respond to any request for the issuance of a certificate of exemption within fourteen working days if the application is signed by a surveyor or within thirty working days of receiving a complete application, as determined by the county, unless the applicant consents to an extension.
10. Staff had been in contact with the surveyor/applicant, Dan Beardslee, during the review of the file to inform him that it was under review with management. Dan Beardslee is a licensed surveyor, therefore the 14 day processing period would apply. However, the file was never deemed complete. Therefore the request for issuance within 14 days is void.
11. Staff recommended that the Hearing Examiner affirm the denial of the Certificate of Exemption.
12. An open record public hearing after due legal notice was held on May 1, 2019.

13. Appearing and testifying on behalf of the Appellant was Michelle Green. Ms. Green testified that she was the attorney for the Appellant and was authorized to appear and speak on their behalf. She introduced Mr. Steve Teeny, a member of Green Tail, LLC.
14. Ms. Green submitted the following exhibits:
  - 14.1 Exhibit 1: Timeline with attachments
  - 14.2 Exhibit 2: Affidavit of Posting
15. The Appellant stipulates that the Plat of Dover was never recorded. However, the plat did receive approval by Chelan County Commissioners on August 7, 1909. She argued that there is a 1909 Statute providing that a plat was not required to be recorded until a lot was sold. The Appellant's position is that recording the plat is not required in order to create a legal lot.
16. The Appellant submitted evidence of a 1964 Order of Vacation of Roads in the Town of Dover, including roads within the Plat of Dover.
17. The Hearing Examiner questions whether a lot could be created and/or maintained in a plat where the lot was not served by any roads, public or private.
18. The question the Appellant believes needs to be answered is whether the plat needed to be recorded in order to create a legal lot of record.
19. The Appellant testified, in response to a question by the Hearing Examiner, that the deed to Green Tail, LLC did not say it was conveying a particular lot, just a metes and bounds legal description.
20. The Appellant agreed that there is currently no direct access to this "lot 12" designated on the original Plat of Dover. The Appellant indicates that Green Tail, LLC acquired by deed a much larger piece of property (see Finding of Fact 19) of which lot 12 was a part and now the Appellant is trying to sell what was originally designated as lot 12.
21. The Appellant stipulates that no individual lots within the Plat of Dover have ever been sold or otherwise individually transferred.
22. The Hearing Examiner has not been able to determine whether or not any of the lots designated in the original Plat of Dover have ever been bisected by new property lines, thereby dividing a lot designated in the original Plat of Dover to 2 different property owners. In other words, have any of the lots set forth in the original Plat of Dover been separated and are now part of two separate parcel numbers?
23. The Hearing Examiner finds that the Order vacating county roads and other miscellaneous roads within the Plat of Dover is not consistent with the Plat of Dover creating legal lots without first recording the plat.
24. A legal lot of record within the original Plat of Dover could not be created unless and until the plat was recorded.
25. The determination made in the preceding Finding of Fact is consistent with the laws in existence in 1909, the fact that no lot has ever been individually sold, that all roads within the plat were vacated, and the fact that none of the lots designated in the original Plat of Dover have ever been individually transferred.
26. All property within the original Plat of Dover have remained undeveloped to date.

27. The Appellant is not entitled to a Certificate of Exemption because the lot which is the subject of the Certificate of Exemption Application had never been legally formed.
28. 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 been granted the authority to render this Decision.
2. In order to create a legal lot of record in 1909, the plat was required to be recorded.
3. County Commissioner approval of a plat in 1909 does not create a legal lot of record without the recording of the plat.
4. *Island County vs. Dillingham Development Company*, 99 Wn.2d 215 (1983) is distinguishable on the facts of this appeal. In *Dillingham*, the property owner was attempting to aggregate small lots in a pre 1937 plat. The court viewed this aggregation as a boundary line adjustment. Under the facts of this appeal, the Appellant wishes to receive a Certificate of Exemption for a lot described in the Plat of Dover but the plat had never been recorded.
5. *Washington State Attorney General opinion 1996 No. 5* is distinguishable because the Plat of Dover was never recorded.
6. *Washington State Attorney General opinion 1998 No. 4* is distinguishable because the Plat of Dover was never recorded.
7. None of the lots within the Plat of Dover are legal lots of record because the recording of the plat is necessary to create a legal lot of record.
8. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

#### DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Denial of Certificate of Exemption 2018-435 is affirmed in all respects.

Dated this 10<sup>th</sup> day of May, 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.

Requests for Reconsideration and to Reopen the hearing must be timely filed and are governed by Chelan County Code 1.61.130 and 1.61.070 and Chelan County Hearing Examiner Rules of Procedure 1.24.

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.