

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUP-2019-002

John Fragnito

RECEIVED

MAY 22 2019

CHELAN COUNTY
COMMUNITY DEVELOPMENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND CONDITIONS
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on May 15, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. This is an application for a Conditional Use Permit requested for the construction of off-site agricultural worker housing. The proposed development includes a 20 ft. x 60 ft. (1,200 sq. ft.) duplex with four (4) parking spaces.
2. The property owner is John Fragnito, PO Box 1047, Chelan, WA 98816.
3. The agent is Jonna Valdez, PO Box 1047, Chelan, WA 98816.
4. The address of the subject site is 91 Apple Acres Rd., Chelan, WA 98816.
5. The parcel number for the subject property is 28-23-33-440-100.
6. The subject site is located in Chelan County, outside of an Urban Growth Area.
7. The Comprehensive Plan designation and zoning designation for the subject site is Commercial Agricultural Lands (AC).
8. The lot was recently processed through BLA 2019-011 and is currently used for commercial agriculture.
 - 8.1 There was a building permit issued in March of 1998 (BP 970878) for a 4 bedroom agriculture worker housing structure; based on the Assessor's records, the 1998 structure was to replace worker housing that burned down in 1991.
9. The subject property has moderate slopes from south to north and majority of the property is in orchard.
10. The subject property is in AC zoning. The surrounding properties are used as residential and agriculture. All adjacent properties are zoned AC except for the property to the south. This property is zoned Rural Residential/Resource 2.5.
11. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped February 20, 2019. The proposed project does not require a vulnerability report, pursuant to Chelan County Code Chapter 11.82.

12. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain identified golden eagle and mule deer habitat. Therefore the provisions of Chelan County Code Chapter 11.78, do apply.
13. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150075B of the FIRM maps, there is potentially floodplain on the subject property. Therefore, the provisions of Chelan County Code Chapter 11.84, Frequently Flooded Areas Overlay District and Chelan County Code Chapter 3.20, Flood Hazard Development, do apply.
14. According to the Natural Resources Stream Typing Maps, there were streams identified on site.
 - 14.1 A stream typing (ST 2019-005) report was prepared by Chelan County Natural Resources Department on March 27, 2019 and it was determined no streams are present on site. Therefore, the provisions of Chelan County Chapter 11.78 as it applies to riparian areas do not apply.
 - 14.2 Although no streams by definition are present on site, it should be noted that the blue lines depicted on the GIS map do indicate overland seasonal runoff. Therefore, runoff infrastructure should be installed and maintained if future building envelopes are proposed near the seasonal runoff sites.
15. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area; therefore, the provisions of CCC, Chapter 11.86 apply to the project.
 - 15.1 A copy of the geological site assessment performed by Donald Larsen was submitted with application. However, the report is not dated and the engineer's stamp has expired; therefore, an updated geological site assessment will be required with building permit application.
16. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
17. There are known cultural resources within close proximity to the subject property. Therefore, precautionary measures should be observed during ground disturbing activities.
18. Applicant plans to begin construction upon approval of application with the construction being completed by August 2019.
19. The subject property fronts and accesses from Apple Acres Road, a public county right-of-way.
20. Water is provided via a private well. A well use agreement was recorded October 15, 2010 under AFN: 2331436.
21. Chelan County PUD provides electrical services to the subject site.
22. A new on-site septic system for 4-bedrooms is proposed with the project.
23. Noise should be similar to other residential uses as well as noise associated with a commercial orchard operation.
 - 23.1 The applicant must comply with Chelan County Code Chapter 7.35 Noise.
24. The use of the property is not changing from commercial agriculture with seasonal agriculture worker housing; the surrounding properties would not being subjected to unknown impacts.
25. The Notice of Application was referred to surrounding property owners within 1,000 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These

agencies and surrounding property owners were notified on April 5, 2019 with comments due April 19, 2019. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:

- 25.1 Chelan County Fire Marshal responded on April 19, 2019.
- 25.2 Chelan County Public Works responded on April 19, 2019.
- 25.3 Chelan-Douglas Health District responded on April 17, 2019.
- 25.4 Confederated Tribes of Colville responded on April 8, 2019.
- 26. The following agencies were notified but did not respond:
 - 26.1 Chelan County Building Official.
 - 26.2 Fire District No. 7.
 - 26.3 WA Dept. of Archaeology and Historic Preservation.
 - 26.4 Yakama Nation
 - 26.5 Chelan County Natural Resources
- 27. No public comments were received.
- 28. The application materials were submitted on February 20, 2019.
- 29. A Determination of Completeness was issued on April 1, 2019.
- 30. The Notice of Application was provided on April 5, 2019.
- 31. The Notice of Public Hearing was provided on May 1, 2019.
- 32. Pursuant to WAC 197-11-800(6) of the State Environmental Policy Act (SEPA), the proposed action is categorically exempt from environmental review.
- 33. Uses appropriate for the Commercial Agricultural Lands (AC) zoning district, identified in the Comprehensive Plan, include agriculture; open space; residential; and forestry. The purpose is to assure the long-term conservation of commercial agricultural lands; to protect and preserve the farmers ability to farm; encourage existing and future agricultural land uses as a viable land use and a significant economic activity within the community; and, to protect agricultural land of long term commercial significance not already characterized by urban development from encroachment and incompatible uses.
- 34. Per Policy 1.8 of the Agricultural Lands Goals and Policies which aims to support the viability of agriculture and encourage the continued use of rural and resource lands for agriculturally related uses. The policy aims to protect the economic viability of the agricultural industry by supporting construction of agricultural worker housing near orchard areas. Where permitted by state agencies, consider the reduction of site development and fire protection standards for temporary housing units for migrant workers; with the rationale, that this will assist the agricultural industry to remain economically viable, reduces transportation needs, and provides adequate housing for agricultural workers.
- 35. The proposed agriculture worker housing is consistent with the goals and policies of the Resource Element of the Comprehensive Plan.

36. The project is consistent with Chelan County Code Section 11.93.040 (1) in the following respects:
 - 36.1 Criteria for off-site agricultural worker housing has been addressed below.
 - 36.2 Based on review of the application materials submitted, the criteria for off-site agricultural worker housing could be satisfied.
37. The project is consistent with Chelan County Code Section 11.93.040 (2) in the following respects:
 - 37.1 The proposed development is located in the Commercial Agricultural Lands (AC) zoning district. The AC zoning district permits off-site agricultural worker housing as a Conditional Use.
 - 37.2 Pursuant to CCC Section 11.30.020(6), no new dwelling unit shall be placed within 100 feet of a property zoned AC. The revised site plan of record, date stamped March 21, 2019, demonstrates the proposed duplex to be used as worker housing could meet applicable zoning setbacks identified in CCC, Section 11.30.020(6).
 - 37.3 Based on the site plan of record, the proposed project meets applicable zoning and critical areas regulations.
38. The project is consistent with Chelan County Code Section 11.93.040 (3) in the following respects:
 - 38.1 The subject property and surrounding properties are operating as orchards. Additionally, residential uses, such as agricultural worker housing, are permitted uses in AC zoning.
 - 38.2 The proposed use of the property is not changing the existing use.
39. The project is consistent with Chelan County Code Section 11.93.040 (4) in the following respects:
 - 39.1 The proposed development of worker housing should not be detrimental to the agricultural resource land as it encourages the continued agricultural use.
 - 39.2 The proposed development would not be detrimental to the resource land of agriculture as it supports the productive use of agricultural lands.
40. The project is consistent with Chelan County Code Section 11.93.040 (5)(a) in the following respects:
 - 40.1 Chelan County provided a Notice of Application to all providers; received comments are included in the file of record.
 - 40.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
41. The project is consistent with Chelan County Code Section 11.93.040 (5)(b) in the following respects:
 - 41.1 The proposed development, as conditioned, would not result in county facilities reduced below adopted levels of service.
42. The project is consistent with Chelan County Code Section 11.93.040 (6) in the following respects:
 - 42.1 The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare
43. The project is consistent with Chelan County Code Section 11.93.040 (7) in the following respects:

- 43.1 *Roads, ingress and egress:* The subject property fronts and accesses off Apple Acres Road, a public county right-of-way.
- 43.2 *Stormwater:* The applicant shall comply with CCC, Title 13; Chelan County Stormwater Guidelines and Procedure.
- 43.3 *Parking and Loading:* CCC, Section 11.93.300, requires 1 parking space per dwelling unit. 4 parking spaces are proposed with development; therefore the minimum requirement has been met.
- 43.4 *Domestic and Irrigation Water:* The proposal is supplied domestic water via a private well.
- 43.5 *Sanitary Facilities:* An on-site septic system for 4-bedrooms is proposed with development.
- 43.6 *Power:* Power is provided by Chelan County PUD.
- 43.7 *Fire Protection:* Fire protection is provided by Chelan County Fire District 7.
- 43.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 44. The project is consistent with Chelan County Code Section 11.93.040 (8) in the following respects:
 - 44.1 *Noise and Vibration:* Noise and vibration will be temporary during construction of the improvements. Construction noise is regulated by CCC, Section 11.88.190 and CCC, Chapter 7.35.
 - 44.2 *Light and Glare:* Lights appurtenant to residential development are regulated by CCC, Section 11.88.080.
 - 44.3 *Heat, Steam, Odors, Smoke and Dust:* The proposed development would not generate heat, steam or odors.
 - 44.4 *Erosion:* The subject property is located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application, but it will not be accepted with building permit as the report is not dated and the engineer's stamp has expired. Staff is recommending as a condition of approval that an updated geological site assessment be submitted with building permit application.
 - 44.5 *Water Quality:* As conditioned, the proposed development would have to meet standards as required by Chelan Douglas Health District.
 - 44.6 *Wastes and Physical Hazards:* No hazards identified.
 - 44.7 *Electrical Disturbance:* The proposal will not result in electrical disturbances.
 - 44.8 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated as conditioned.
- 45. The project is consistent with Chelan County Code Section 11.93.040 (9) in the following respects:
 - 45.1 The proposed agricultural worker housing is consistent with the goals and policies of the Resource Element of the Comprehensive Plan.
 - 45.2 The project is consistent with the Chelan County Comprehensive Plan.
- 46. The project is consistent with CCC Section 11.93.300 (1) in the following respects:

- 46.1 The proposed development is required to obtain a residential building permit from Chelan County Building Department. Prior to the issuance of the building permit, the project would be required to be approved by Chelan Douglas Health District for domestic water and sanitation.
- 46.2 As conditioned, all applicable building and health regulations would be met.
- 47. The project is consistent with CCC Section 11.93.300 (2) in the following respects:
 - 47.1 The proposed development is in support of the surrounding orchard land. Additionally, residential dwellings are an allowable use per the Chelan County Comprehensive Plan.
 - 47.2 In order to be compatible with agricultural activities, CCC, Section 11.30.020, requires that no new dwelling unit shall be placed within 100 feet of a property zoned AC.
 - 47.3 As conditioned, the proposed worker housing is compatible with the surrounding agricultural land uses.
- 48. The project is consistent with CCC Section 11.93.300 (3) in the following respects:
 - 48.1 A Notice to Title would be required to be recorded with the Chelan County Auditor stating that the proposed worker housing located on the subject property is to be used solely for the purpose of housing agricultural workers and their families. The Notice to Title will be required to be submitted with building permit.
- 49. The project is consistent with CCC Section 11.93.300 (4) in the following respects:
 - 49.1 Commercial Agricultural Lands (AC) zoning has a maximum building height of 35 feet. Building plans submitted with application, demonstrate that the overall building height as measured to the ridge of the roof, is approximately 12 feet.
 - 49.2 The proposed worker housing does not exceed a building height of 35 feet; therefore, this provision can be satisfied.
- 50. The project is consistent with CCC Section 11.93.300 (5) in the following respects:
 - 50.1 Commercial Agricultural Lands (AC) zoning district requires that buildings and structures shall not occupy more than 35% lot coverage. The subject property is approximately 28.42 acres which allows for approximately 433, 291 sq. ft. of lot coverage.
 - 50.2 The worker housing duplex is proposed at 1, 200 total sq. ft
 - 50.3 The existing structure and proposed structure would not exceed the allowable lot coverage for the subject property.
- 51. The project is consistent with CCC Section 11.93.300 (6) in the following respects:
 - 51.1 The proposed development is not located in an industrial zoning district; therefore, this provision does not apply.
- 52. As set forth in Finding of Fact 49, the project is consistent with CCC Section 11.93.300 (7).
 - 52.1 There are 2 residential units proposed with application, requiring a total of 2 parking spaces. Based on the site plan of record, 4 parking spaces are proposed with the worker housing.
 - 52.2 The number of proposed parking spaces exceeds the minimum requirement; therefore, this provision would be satisfied.

53. Staff has 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 recommends **APPROVAL** subject to the attached recommended conditions of approval, which may be modified as appropriate in support of the decision of the Hearing Examiner.
54. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
55. An Open Record Public Hearing after due legal notice was held on May 15, 2019.
56. Appearing and testifying on behalf of the Applicant was John Fragnito. Mr. Fragnito testified that he is the property owner and the Applicant. Mr. Fragnito testified that all of the proposed Conditions of Approval were acceptable.
57. 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. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the Commercial Agricultural Lands (AC) land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. 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 noted Findings and Fact and Conclusions, Conditional Use CUP 2019-002 is hereby **APPROVED**.

CONDITIONS OF APPROVAL

All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

1. Pursuant to Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
2. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan County Public Works Agency Comment response dated April 19, 2019.
3. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Comment response dated April 19, 2019.
4. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan Douglas Health District Agency Comment response dated April 17, 2019.
5. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this application, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
6. Pursuant to Chelan County Code Section 11.93.090, upon final action of the hearing examiner to deny an application for a conditional use permit, the department shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
7. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Residential Building Permit shall be required for the proposed 1,200 sq. ft. agricultural worker housing.
8. Pursuant to Chelan County Code Section 11.93.300(3), a Notice to Title shall be recorded with the Chelan County Auditor stating that the proposed worker housing located on the subject property is to be used solely for the purpose of housing agricultural workers and their families.
 - a. A copy of the recorded Notice to Title shall be submitted with building permit application.
9. Pursuant to Chelan County Code Sections 11.93.300(4) & (5), the building height and lot coverage shall not exceed the limits set forth in Chelan County Code, Section 11.30.020.
10. Pursuant to Chelan County Code Section 11.93.300(7), one parking space per residential unit, not within a required yard setback, shall be provided.
11. Pursuant to Chelan County Code Section 11.30.020(6), no new dwelling unit shall be placed within 100 feet of a property zoned as Commercial Agricultural Lands (AC), except as modified by said section.
12. Pursuant to Chelan County Code Section 11.86.020, an updated geologic site assessment shall be required at the time of building permit application.

13. Pursuant to Chelan County Code Section 11.88.080, security lights or any exterior lighting shall be low-intensity, non-flashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines.
14. Pursuant to Chelan County Code Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plan date stamped March 21, 2019 and building plans date stamped February 20, 2019.
15. Pursuant to Chelan County Code Section 11.93.110, a conditional use permit shall become void if not acted upon, including but not limited to submitting a building permit or the placement of all infrastructure, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
16. Pursuant to Chelan County Code Section 11.93.120, action of the Hearing Examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Approved this 21st 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.

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.