

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF **RECEIVED**) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, DECISION AND CONDITIONS
P 2019-006 **SEP 12 2019**) OF APPROVAL (REVISED)
Smart **CHELAN COUNTY**)
COMMUNITY DEVELOPMENT

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on September 4, 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 application was submitted to subdivide approximately 2.72 acres into 5 residential lots. The smallest lot size is approximately 18,108 square feet with the largest lot size of approximately 31,777 square feet.
2. The applicant/owner is Clarence Smart, PO Box 4921, Wenatchee, WA 98807.
3. The surveyor is Michelle Taylor, Northwest GeoDimension, 15 North Chelan Ave, Wenatchee, WA 98801.
4. The subject site is located at NNA Lower Monitor Road, Wenatchee, WA 98801.
5. The subject parcel number for the property is 23-20-19-120-320.
6. The development is located outside an urban growth area.
7. The current Comprehensive Plan and zoning designations are Rural Village (RV).
8. The property is currently used as residential and vacant land.
9. The property is situated on gently sloping ground towards the south.
10. The site size is approximately 2.72 acres.
11. The property to the north of the subject property is a residential lot and is zoned Rural Village (RV).
12. The property to the south of the subject property is US HWY 2 and is zoned Rural Residential/Resource 10 (RR10).
13. The property to east of the subject property is in residential use and is zoned Rural Village (RV).
14. The property to west of the subject property are residential lots and is zoned Rural Village (RV).
15. The application materials were submitted on March 4, 2019.
16. The Determination of Completeness was issued on April 16, 2019.
17. The Notice of Application was issued on April 18, 2019.

18. The SEPA Notice was issued on July 15, 2019.
19. Notice of Public Hearing was issued on August 23, 2019.
20. The applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped April 24, 2019. Pursuant to Chapter 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply.
21. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150625C, the property does not contain identified 100 or 500-year flood plain or associated floodway. Therefore, Chelan County Code Chapter 11.84, Frequently Flooded Areas Overlay District does not apply.
22. Pursuant to the Chelan County Geographical Information system, the property contains potential geologic hazardous areas. The applicant submitted a Geological Site Assessment, dated February 27, 2017. The report includes several recommendations for construction which should be adhered to for the design and construction of the proposed subdivision.
 - 22.1 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.
23. Pursuant to the National Wetlands Inventory Map the property does not contain known wetlands. Therefore, Chelan County Code Chapter 11.80 does not apply.
24. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, the property does not contain any known streams. Therefore, Chelan County Code 11.78 does not apply.
25. 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 conservation areas. Therefore, the provisions of Chelan County Code Chapter 11.78 do apply.
26. A cultural resource study is not necessary, but an inadvertent discovery plan would be required at time of building permit submittal.
 - 26.1 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. Staff recommended notification if any artifacts are uncovered or discovered during the development of the proposed subdivision.
27. On October 10, 2018 a pre-application meeting was held to discuss the feasibility of the proposed development.
28. The property is accessed from Lower Monitor Road a 60' right-of-way and is classified as a local access road in the county road system. Lower Monitor Road consists of single travel lands for both directions with no curb, gutter or sidewalk along the frontage of the proposed development.
 - 28.1 The development is proposing an internal road for access. The design and construction of the new proposed internal road would be required to be constructed to meet a rural emergency vehicle access road (Standard Plan PW-22) with emergency vehicle turnaround (Standard Plan PW-23 A or B) for this subdivision.
29. The comment letter from Chelan County Public Works, dated June 18, 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.

30. Sanitation availability letter from Chelan-Douglas Health District, dated May 21, 2019, states:
 - 30.1 Water availability letter from Chelan County PUD the proposed development is within the District's existing water service area and would require water system improvements.
 - 30.2 All lots meet state minimum lot size based upon soil type.
31. The comment letter from Department of Ecology, dated May 28, 2019, states the subject property was historically used as an orchard and may contain contaminated soils. The presence of these contaminants may be a health hazard with earth disturbing activities. Dust control must be maintained.
32. Line extensions would be necessary for the development and that additional easements would be needed for the PUD primary lines if not dedicated on the face of the Plat.
33. The comment letter from the Chelan County Fire Marshal, date stamped May 28, 2019, states the subject property is located within Fire District #1. Additional fire hydrants would be necessary to service this development. It has yet to be determined if the plans for fire apparatus access roads are adequate.
34. The comment letter from Chelan County Assessor, dated stamped May 22, 2019, states the legal description appears to be correct and there are no delinquent taxes.
35. Noise impacts are addressed in Chelan County Code Chapter 7.35.
36. The applicant submitted an environmental checklist on March 4, 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. Determination of Non-significance (DNS) was issued on July 11, 2019. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
37. The Notice of Application was referred to agencies and departments on April 18, 2019 and surrounding property owners within 300 feet, excluding 60 feet of right-of-way with comments due May 2, 2019.
38. The following agencies and County departments provided comments:
 - 38.1 Chelan County Public Works responded on June 18, 2019.
 - 38.2 Chelan County Fire Marshal responded on May 28, 2019.
 - 38.3 Chelan County Assessor responded on May 22, 2019.
 - 38.4 Chelan-Douglas Health District responded on May 21, 2019.
 - 38.5 Fire District #1 responded on April 24, 2019.
 - 38.6 Washington Department of Ecology responded on May 28, 2019.
 - 38.7 Chelan County PUD #1 responded on May 17, 2019.
 - 38.8 Washington State Archaeology responded on April 25, 2019.
 - 38.9 Confederated Tribes of the Colville Nation responded on May 17, 2019.
39. The following agencies were provided notice and did not respond:
 - 39.1 Wenatchee Reclamation District

- 39.2 Wenatchee School District
- 39.3 Yakama Nation
- 40. Public comments were received from the following individuals:
 - 40.1 Manuel and Elizabeth Rivera commented on May 31, 2019, generally concerned with safety, traffic, shared well and storm drainage.
 - 40.2 Robert & Beverly Gray commented on May 31, 2019, concerned with the access and increased traffic.
 - 40.3 Donald Larson commented on May 31, 2019, concerned with the increased traffic, the size and condition of the access easement and safety.
 - 40.4 Robert Hansen commented on May 30, 2019, concerned with the access to the proposed development and with the possible loss of property value due to the development.
- 41. An adequate supply of housing available to all income levels is necessary to meet the housing needs of the county.
- 42. The placement of housing should take into consideration compatibility with the character of existing and future residential areas.
- 43. Incompatible land uses located in close proximity to residential neighborhoods may create adverse impacts which could lead to a reduction of the high quality of life for the county residents.
- 44. Physical characteristic and the availability of utilities are important factors in determining residential development patterns and densities. In addition, residential densities must be consistent with the guidance of the comprehensive plan and the requirements of the act.
- 45. The site plan of record, date stamped April 24, 2019, indicates that all minimum dimensional standards will be met.
- 46. The project is consistent with Chelan County Code (CCC) Section 14.08.010 in the following respects:
 - 46.1 The applicant participated in a pre-application meeting with Chelan County Community Development on November 15, 2018.
- 47. The project is consistent with Chelan County Code (CCC) Section 12.02.060(2) in the following respects:
 - 47.1 The subject property has domestic water and power available for the proposed development. Extensions of the existing lines would be required for power. Domestic water is available from expansion of Chelan County PUD and the development would utilize on-site septic systems
- 48. The project is consistent with Chelan County Code (CCC) Section 12.08 in the following respects:
 - 48.1 Review of the name would be required prior to final plat approval to determine that it does not match or is not similar to an existing plat name.
- 49. The project is consistent with CCC Section 12.08.030(1)(B) in the following respects:
 - 49.1 Electrical services is available from the Chelan County PUD No. 1. However, line extension would be required.
- 50. The project is consistent with CCC Section 12.08.030(2) in the following respects:

- 50.1 The applicant is proposing access by a private road and private driveways. Private road standards, as detailed in Title 15, apply to this development and require an approved maintenance agreement.
51. The project is consistent with CCC Section 12.08.030(3) in the following respects:
- 51.1 All easement locations are required to be shown on the final plats, pursuant to CCC 12.08.030. Separate instruments recorded with the Chelan County Auditor should be referenced on the face of the final plat. Required easements, shall be reviewed with the blue line submittal.
52. The project is consistent with CCC Section 12.08.030(4) in the following respects:
- 52.1 Easement locations and purpose(s) should be indicated on the final plat. Easements shall be reviewed with blue line submittal.
53. The project is consistent with CCC Section 12.08.040 in the following respects:
- 53.1 The subject property is located in Fire District 1. The Chelan County Fire Marshal requires conformance with the International Fire Code. The nearest fire station is less than 1 mile from the subject property. Pursuant to Chelan County Code 3.04.010, State Building Code, all building permits require compliance with the International Fire Code(s), as adopted or amended by Chelan County.
54. The project is consistent with CCC Section 12.08.050 in the following respects:
- 54.1 Chelan County Public Works comments state that the stormwater review is required prior to blue line review. Pursuant to Chelan County Code 13.16, a stormwater plan be prepared and implemented based on comments from Chelan County Public Works.
55. The project is consistent with CCC Section 12.08.060 in the following respects:
- 55.1 The property is not impacted by a watercourse.
56. The project is consistent with CCC Section 12.08.080 in the following respects:
- 56.1 Road Standards: All land divisions shall comply with Title 15.
57. The project is consistent with CCC Section 12.08.090 in the following respects:
- 57.1 Per Title 15 of the Chelan County Code, monuments should be required prior to submittal of the final plat or as approved by Chelan County Public Works Department. Compliance with CCC 15.30.825 shall be a condition of approval.
58. The project is consistent with CCC Section 12.08.100(2) in the following respects:
- 58.1 The subject property is not impacted with flood plain or flood way.
59. The project is consistent with CCC Section 12.24.015 in the following respects:
- 59.1 The applicant shall have five (5) years to final the plat from the date of preliminary approval.
60. The project is consistent with CCC Section 11.20.020 in the following respects:
- 60.1 Pursuant to the review within this staff report, the proposed development is consistent with the applicable chapters of the zoning code for the Rural Village (RV) zoning districts, together with Chelan County Comprehensive Plan.

61. **CHELAN COUNTY CODE CRITICAL AREAS**

- 61.1 Pursuant to the Chelan County Geologically Hazardous Areas map data, the subject property does contain potential geologically hazardous areas; therefore, the provisions of Chelan County Code Chapter 11.86, Geologically Hazardous Areas Overlay District do apply.

62. **CHELAN COUNTY CODE STORMWATER**

- 62.1 Stormwater would be required to meet the standards of Chelan County Code Title 13. Stormwater would be required for the entire subdivision and all required infrastructure improvements placed prior to final plat approval.

63. **DEPARTMENT OF COMMUNITY DEVELOPMENT SUMMARY:**

- 63.1 This proposal is to develop a five (5) lot residential subdivision with one (1) stormwater tract on a 2.69 acres parcel. The property is situated on gently sloping ground towards the south. Critical areas identified are potential geological hazard areas.
- 63.2 Access to the lots would be provided by a 30' access and utility easement. Potable water would be provided by Chelan County PUD and the development would utilize on-site septic systems.
64. Staff recommended **APPROVAL** of File # P 2019-006, subject to recommended Conditions of Approval.
65. An open record public hearing after legal notice was provided was held on September 4, 2019.
66. 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.
67. Appearing and testifying on behalf of the applicant was Michelle Taylor. Ms. Taylor testified that she was an agent authorized to appear and speak on behalf of the applicant, property owner and engineer. Ms. Taylor testified that all proposed conditions of approval were acceptable to the applicant and property owner. She stated that all internal roads would be private and that there would be a new geotechnical report.
68. Testifying from the public were the following individuals:
- 68.1 Donald Larson. Mr. Larson testified consistent with his written comments. His concern was safety of the access through the easement and the impact that the project would have on two wells in the project area. He asked for a 6' vinyl fence to surround the applicant's property for privacy.
- 68.2 Robert Gray. Mr. Gray testified consistent with his prior written comments. Mr. Gray's concern was that the travel over the easement roadway would deteriorate the roadway to a great extent. He testified that there are irrigation pipes underneath the easement roadway that would likely be damaged by vehicles driving over them. He had concerns regarding access into the project area from Lower Monitor Road. He had concerns regarding the Well heads. He stated that there was no formal road maintenance agreement at this point.
- 68.3 Debbie Hanson. Ms. Hanson testified consistent with the written comments of Robert Hanson. Her primary concern is that the width of the easement would be too narrow for two vehicles to pass by each other.

- 68.4 Manuel Rivera. Mr. Rivera testified consistent with his written comments. Mr. Rivera's property is immediately at the junction of Lower Monitor Road with the access to the property. He stated that he had small children and pets that play in the access area and therefore he had safety concerns. He also stated that the access from Lower Monitor Road was a blind corner into the easement area. He also requested vinyl fencing be required for the perimeter of the applicant's property.
69. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
70. 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 and is consistent with the Chelan County Comprehensive Plan.
4. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated by herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, P 2019-006 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.

1. Pursuant to RCW 58.17, the development 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 11.20.020, the proposal shall comply with the Rural Village (RV) Zoning District's dimension and/or development standards.
4. Pursuant to Chelan County Code Section 12.08.030 and 12.24.020(3) and Chapter 15.30, all easement locations are required to be shown on final plats.

5. Pursuant to RCW 84.56.345, all taxes, delinquent taxes, and assessments that are required by the Chelan County Treasurer are to be paid prior to final Plat recording.
6. Pursuant the Chelan County Code Section 12.02.010(1), the following note shall be placed on the final plat mylar:
 - 6.1. "Chelan County is not responsible for notification or enforcement of covenants or 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."
 - 6.2. "Based on historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. The Washington State Department 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 Washington State Department of Ecology recommends that the potential buyers be notified of their occurrence."
7. Pursuant to RCW 27.53.020, the applicant shall stop work and contact Community Development and the Department of Archaeology and Historic Preservation and other agencies as required, regarding the possible impact of construction activities on the state's archaeological resources.
8. Pursuant to Chelan County Code Section 12.24.015, the following note shall be placed on the final plat mylar:
 - 8.1. "Agricultural activities occur throughout Chelan County and may or may not be compatible with residential development."
9. Pursuant to the Revised Code of Washington, the following notes shall be placed on the final plat:
 - 9.1. "Noxious weed control is the responsibility of the individual lot owners, per RCW 17.10.140, as amended."
 - 9.2. "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."
 - 9.2.1. 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 is attached as Exhibit A.
10. Pursuant to Chelan County Code Chapter 11.78, the following note shall be placed on the final plat:

- 10.1. "The subject site is located within mule deer habitat area and shall be subject to the provisions of the Chelan County Code Chapter 11.78 Fish and Wildlife Habitat Conversation Areas Overlay District, as amended."
11. Pursuant to Chelan County Code Section 11.86.070, a geologic site assessment must be completed and submitted for review prior to final plat approval consistent with the requirements of this section.
12. Pursuant to Chelan County Code Section 11.86.080, the following note shall be placed on the final Plat:
- 12.1. "All development shall be consistent with Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, as amended; and the Geotechnical Engineering Evaluation and Geologic Hazard Assessment prepared by Nelson Geotechnical Associates, Inc. dated _____ or with a site-specific geological site assessment."
13. CHELAN COUNTY FIRE MARSHAL
- 13.1 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 May 28, 2019.
14. CHELAN-DOUGLAS HEALTH DISTRICT
- 14.1 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 May 21, 2019.
15. CHELAN COUNTY PUBLIC WORKS DEPARTMENT
- 15.1 The subject property and final plat shall conform to the comments and conditions of approval as found in the Chelan County Public Works memorandum dated June 18, 2019.
16. CHELAN COUNTY PUBLIC UTILITY DISTRICT:
- 16.1 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.

Approved this 12th day of September, 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.