

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	RECEIVED)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, DECISION AND CONDITIONS
PA 2019-003	SEP 27 2019)	OF APPROVAL
van den Broek)	
	CHELAN COUNTY		
	COMMUNITY DEVELOPMENT		

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on September 18, 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 Plat Alteration to remove a note on the face of the plat only intended for Lot 12 of Sleepy Hollow Estates. That stated note "this easterly portion of Lot 12 is not a buildable site and shall not be sold separately from the westerly portion of lot 12".
2. The applicants are Keith M. and Mark David van den Broek.
3. The Surveyor/Engineer is Munson Engineers/Weinert Surveying, Brian Baker, 894 Hwy 2, Suite H, Leavenworth, WA 98826.
4. The project location and parcel numbers are 2030 Sleepy Hollow Heights, Wenatchee, WA, 98801. Parcel number 23-20-19-830-120.
5. The property is outside of an Urban Growth Area.
6. The current Comprehensive Plan designation and Zoning district is Rural Residential/Resource 5 (RR5).
7. The existing land use is residential.
8. The property is situated on a slight to moderate sloping ground on the east side of Sleepy Hollow Heights Road.
9. The property to the north of the subject property is residential lots and the Wenatchee River and zoned Rural Residential/Resource 5 (RR5).
10. The property to the south of the subject property is residential lots and is zoned Rural Residential/Resource 5 (RR5).
11. The property to the west of the subject property is residential lots and is zoned Rural Residential/Resource 5 (RR5).
12. The property to east of the subject is residential lots and is zoned Rural Residential/Resource 10 (RR10) and Rural Residential 5 (RR5).
13. Pursuant to WAC 197-11-800(6), this activity is deemed categorically exempt from State Environmental Policy Act.
14. The Notice of Application was referred to agencies and departments on June 13, 2019 and surrounding property owners within 300' excluding 60' of right-of-way, with comments due June 27, 2019. The following agencies provided comments:

- 14.1 Chelan-Douglas Health District responded on June 18, 2019
- 14.2 Chelan County Assessor responded on June 13, 2019
- 14.3 Colville Confederated Tribes responded on July 23, 2019
- 14.4 Chelan County Fire Marshal responded on June 28, 2019
- 14.5 Chelan County Public Works responded on June 19, 2019
15. The following agencies were notified but did not respond:
 - 15.1 Fire District #1
 - 15.2 Washington State Department of Archaeology
 - 15.3 Chelan County PUD #1
 - 15.4 Washington State Department of Ecology
 - 15.5 Yakama Nation
16. The following public comment was received:
 - 16.1 Dave and Jan Devnich responded on June 20, 2019
17. The application materials were submitted on May 20, 2019.
18. A Determination of Completeness was issued on June 10, 2019.
19. The Notice of Application was provided on June 13, 2019.
20. The Notice of Public Hearing was issued on September 6, 2019.
21. The Chelan County Comprehensive Plan, page RU 13, states the purpose of the Rural Residential/Resource 5 (RR 5) designation is to provide a “opportunities for small scale agricultural activities, and rural development consistent with the rural character and rural development provisions outlined in goals and policies of the comprehensive plan. These areas may provide opportunities for protecting sensitive environmental areas and open space typical of a rural setting. RR5 designations adjacent to urban growth areas are intended to encourage the preservation of rural areas until such time as they serve as urban growth areas and urban services become available. RR5 designations can also act as buffers between designated resource lands and more intense rural or urban development.
22. The uses appropriate for these areas include: open space; residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: natural resource support facilities and services; mineral resource activities; intensification of existing development or new development of small scale recreational or tourist uses that rely on a rural location or setting but that do not include a new residential component; intensification of development on lots containing existing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents; home occupations; bed and breakfasts; and community facilities.”
23. The project is consistent with Chelan County Code (CCC) 11.12.020 in the following respects:
 - 23.1 The site plan of record, date stamped May 20, 2019, indicates that Lot 12 is bisected by Sleepy Hollow Heights Road creating two (2) separate lots via intervening ownership establishing two (2) legal lots pursuant to Chelan County Code Section 12.14.050(4).
24. The project is consistent with CCC 12.22.020 (1) in the following respects:
 - 24.1 The proposed alteration was submitted in accordance with this title.

25. The project is consistent with CCC 12.22.020 (2) in the following respects:
 - 25.1 The proposed alteration is to remove a note on the face of the plat that reads “this easterly portion of Lot 12 is not a buildable site and shall not be sold separately from the westerly portion of Lot 12.” The property owners of Lot 12 of Sleepy Hollow Estates have signed the application.
 - 25.2 All parties with a legal interest shall be required to sign the final Plat Alteration.
26. The project is consistent with CCC 12.22.020 (3) in the following respects:
 - 26.1 Sleepy Hollow Estates recorded general covenants (AFN 9111200067) states:

“In the event that county ordinance should change and allow further subdivision, each parcel may only be subdivided once into no more than 2 parcels. Any resulting parcels would be subject to those same covenants and restrictions as well as domestic water association limitations.”
 - 26.2 The applicant is not proposing to subdivide Lot 12. However Lot 12 is currently bisected by Sleepy Hollow Heights road. Pursuant to Chelan County Code Section 12.14.050(4), Exemption categories and criteria, Lot 12 is a property that is reconfigured by a road creating a new lot by intervention.
 - 26.3 Pursuant to Chelan County Code 12.14.050(4) a lot is created by intervention when it is bisected by a road; therefore this provision does not apply.
27. The project is consistent with CCC 12.22.020 (4) in the following respects:
 - 27.1 RCW 64.04.175 states “Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.”
 - 27.2 The affected parties of Sleepy Hollow Estates have signed the submitted application date stamped May 20, 2019.
 - 27.3 The proposed plat alteration is compliant with RCW 64.04.175.
28. The project is consistent with CCC 12.22.020 (5) in the following respects:
 - 28.1 The plat is not within any assessment district, therefore nothing needs to be divided prior to recording of this plat alteration.
 - 28.2 This provision does not apply.
29. The project is consistent with CCC 12.22.020 (6) in the following respects:
 - 29.1 The applicant would be required to submit blueline drawings and final plat to the Chelan County Department of Community Development for review and approval.
 - 29.2 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in the Chelan County Code Chapter 12.24.
30. The project is consistent with CCC 12.22.020 (7) in the following respects:
 - 30.1 Part of the application materials include a proposed plat alteration, prepared by a licensed surveyor. Although the original notes were not included on the proposed plat alteration. If approved an updated plat would need to be submitted with all original notes excluding note stating “this easterly portion of Lot 12 is not a buildable site and shall not be sold separately from the westerly portion of Lot 12.”

- 30.2 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in the Chelan County Code Chapter 12.24.
31. After review of the application and submitted materials, based on the information contained in the application, staff recommended APPROVAL of PA 2019-003, subject to the attached Recommended Conditions of Approval.
 32. An open record public hearing after legal notice was provided was held on September 18, 2019.
 33. 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.
 34. Appearing and testifying on behalf of the applicant was Keith van den Broek. Mr. van den Broek testified that he was an agent authorized to appear and speak on behalf of the property owners and applicants. Mr. van den Broek testified that he concurred with all of the staff report findings and conclusions and had no objection to any of the proposed conditions of approval.
 35. Testifying from the public was the following individual:
 - 35.1 Paul Fowler. Mr. Fowler testified that he owns the property downhill from the proposed portion of Lot 12 to be divided and he believes that this portion of Lot 12 should not be built upon because of the impacts it will have on his property.
 36. The Hearing Examiner questioned why this note was placed on the plat. The Hearing Examiner kept the record opened until September 25th, 2019 at 5:00 p.m. for staff, applicant and/or the public to provide additional evidence surrounding why this plat note was created.
 37. On September 20th, 2019, staff provided the Hearing Examiner with a copy of the original file regarding the plat.
 38. On September 23, 2019, staff presented the Hearing Examiner with a written comment from Keith M. van den Broek. In this letter, Mr. van den Broek discusses a conversation he had with the original developer of this plat. The original developer related his recollection that the easterly portion of Lot 12 was originally intended to be removed through a boundary line adjustment after the road went in and then sold separately to another individual, who is now deceased. This was never done.
 39. The Hearing Examiner is satisfied with the explanation provided by Mr. van den Broek as to the original purpose of this plat note.
 40. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
 41. 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. All of the criteria set forth in Chelan County Code 12.22.020 have been satisfied.
3. This plat amendment is consistent, in all respects, with the Chelan County Code, the Chelan County Comprehensive Plan and the Revised Code of Washington.

4. 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, PA 2019-003 hereby **APPROVED**, subject to the conditions of approval.

CONDITIONS OF APPROVAL

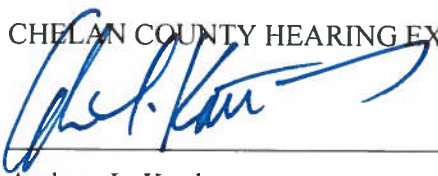
All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

CHELAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

1. Pursuant to Chelan County Code Chapter 12.24, the applicant shall complete a final plat alteration using the procedures of Chelan County Chapter 12.24 Final Process.
2. Pursuant to Chelan County Code Section 12.24.040 as amended, the final Plat Alteration shall be designed in substantial conformance with the Preliminary Plat Alteration on file with the Chelan County Department of Community Development, except as modified herein.
3. Pursuant to Chelan County Code 12.24.020(2) and RCW 58.17.215, the applicant shall provide a signature block for the affected/majority of the property owners on the final plat, and secure the majority property owner's signatures prior to final plat recording.
4. Pursuant to Chelan County Decision for Sleepy Hollow Estates, this Plat Alteration is subject to the Conditions of Approval, except as changed by this decision together with the original major plat decision.

Approved this 26th 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.