

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF )  
 )  
CUP 2019-008 ) FINDINGS OF FACT, CONCLUSIONS  
 ) OF LAW, DECISION AND CONDITIONS  
Schuh/Property Trio LLC ) OF APPROVAL  
 )

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on April 1, 2020, 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 for the construction of five (5) cabins for the purpose of nightly recreational rentals. Each cabin will be approximately 320 sq.ft. in size and will be serviced with potable water, power, and wastewater. A Class B Water System has been proposed utilizing an existing well and wastewater will be serviced by Chelan County PUD as part of the Lake Wenatchee wastewater system. The cabins will be accessed via an existing shared private driveway. The parcel is zoned RRR (Rural Recreational/Residential).
2. The applicant/owner is Brandon Schuh / Property Trio LLC, 15903 Bow Hill Rd., Bow, WA 98232.
3. The project location and parcel number is 87 Headwater Lane, Lake Wenatchee, WA 98826, and is identified by Assessor's Parcel Nos. 27-17-27-320-300 (Parcel A) and 27-17-27-320-350 (Parcel B).
4. The abbreviated legal description for both Parcel A and B is – A portion of Government Lot 6, Section 27, Township 27 North, Range 17 East NWM. The combined lots result in a total of approximately 2.0 acres per the Assessor's records.
5. The subject property is located in the Rural Recreational/Residential (RRR) zoning district.
6. The subject properties will be accessed from Headwater Lane, a private access easement off of SR 207.
7. Parcel A is currently vacant. Per Assessor's data, no structures have been built on this parcel. Parcel B currently has an existing 888 sq. ft. cabin built in 2011 that is used for residential and recreational purposes. Properties to the north, south and east are Commercial and zoned Rural Commercial (RC). The property to the west is Residential and zoned Rural Recreational/Residential (RRR).
8. Utilities / Services
  - 8.1 Sanitary Sewer: The project will utilize a STEP tank and appurtenances located on both parcels, which will be hooked into the Chelan County PUD's Lake Wenatchee services.
  - 8.2 Domestic Water: Domestic water is to be supplied by a public water system yet to be developed. Parcel A has an existing private well that is to be upgraded to the standards of a Group B Water System.
  - 8.3 Power/Electricity: Chelan County PUD

- 8.4 Fire Protection: Chelan County Fire District
- 8.5 Police Protection: Chelan County Sheriff
9. Aquifer Recharge Area. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 10, 2019. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
10. Fish & Wildlife Habitat Conservation Areas. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property contains Freshwater Forested/Shrub Wetland habitat and mule deer habitat. Therefore, the provisions of CCC Chapter 11.78, do apply.
11. Riparian Area. Pursuant to the Natural Resources Stream Typing Maps, there are no streams located on the subject property. Therefore the development is not subject to CCC Chapter 11.78.
12. Geologically Hazardous Areas. Chelan County GIS mapping indicates that the subject property is not located within a potential geologic hazard area. Therefore, the provisions of CCC Chapter 11.86 would not apply.
13. Wetlands. Based on the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, wetlands are located on or adjacent to the subject properties. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would apply to the project.
- 13.1 A wetland report prepared by Ryan Walker of Grette Associates on May 29, 2019, was submitted with the application. According to the report, field work performed determined that neither of the subject properties contains wetlands and the buffers of off-site wetlands do not extend onto the subject properties.
14. Cultural Resources. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes of the Colville Reservation, and Chelan County Community Development.
- 14.1 Per comments received from DAHP, a Cultural Resource Assessment for the project was prepared by Dave Iversen and Brandon Sybrowsky of ASM Affiliates, Inc. dated March 2020. This assessment included an archival/literature review and a field survey of the project area. Based on the results of the assessment, a determination was made that unidentified cultural resources are unlikely to be present within the project area and no further recommendations were suggested.
15. Construction is anticipated to commence upon completion of all required permits.
16. The applicant must comply with CCC Chapter 7.35 Noise.
17. As conditioned, the visual impact is anticipated to be minimal. The proposed tiny cabins are compatible with the recreational use of the surrounding properties.
18. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on January 7, 2020, with comments due January 21, 2020. 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:
- 18.1 Chelan County Building Official responded on January 10, 2020
- 18.2 Chelan County Fire Marshal responded on January 21, 2020



- 18.3 Chelan County Public Works responded on January 23, 2020
  - 18.4 Chelan Douglas Health District responded on January 14, 2020
  - 18.5 Chelan County PUD responded on January 9, 2020
  - 18.6 WA Dept. of Archaeology and Historic Preservation responded on January 8, 2020
19. The following agencies were notified but did not respond:
- 19.1 Chelan County Assessor
  - 19.2 Chelan County Fire District No. 9
  - 19.3 WA Department of Ecology
  - 19.4 WA Dept. of Fish & Wildlife
  - 19.5 Yakama Nation
  - 19.6 Confederated Tribes of the Colville Reservation
20. There were no public comments.
21. The application materials were submitted on July 10, 2019, with additional information submitted through December 4, 2019.
22. A Determination of Completeness was issued on December 13, 2019.
23. The Notice of Application was provided on January 7, 2020, by posting and mail.
24. The Notice of Public Hearing was issued on March 18, 2020.
25. The project is consistent with Chelan County Code (CCC) in the following respects:
- 25.1 The purpose of the Rural Recreational/Residential (RRR) land use designation of the Rural Element is to allow for rural development consistent with the rural character. Additional uses may be considered with supplemental provisions, such as "...new development of small scale recreational or tourist uses that rely on a rural location or setting but do not include a new residential component..."
  - 25.2 The Hearing Examiner finds that the project, as conditioned, is consistent with the goals and policies of the Rural Element within the Chelan County Comprehensive Plan.
26. The project is consistent with CCC Section 11.93.040 in the following respects:
- 26.1 Chelan County Code, Section 11.93.370: Small-Scale Recreational or Tourist Use:
    - 26.1.1 Small-scale recreational and tourism uses include activities and facilities defined in Section 14.98.1795: "Small scale recreation and tourism means a land use that relies on a setting to provide recreational or tourist use, including recreational center and commercial facilities to serve those uses, but that does not include new residential development. It includes activities and facilities such as, but not limited to, cultural/religious camps, retreat centers, campgrounds, RV parks, lodges and cabin rentals, camping units, outdoor equipment rentals, guide services, trails and trailhead facilities, and similar uses. Small scale recreational and tourist uses are of a size or intensity which has minimal impacts on the surrounding area and which makes minimal demands on the existing infrastructure and public service."
    - 26.1.2 Based on the above definition of small scale recreation and tourist use, the proposed cabins for nightly rental would meet the definition and intent of a small scale recreation tourist use.

- 26.2 Facilities and activities that may occur within small-scale recreational or tourist uses include administrative and storage buildings, meeting/conference facilities, recreational facilities including but not limited to trails, equestrian facilities, interpretive and/or educational facilities, ball fields, swimming pools, exercise facilities/gymnasiums, as well as short-term visitor accommodations such as lodges, cabins, tent and RV camp sites, consistent with applicable building codes and the requirements of this code.
- 26.2.1 The proposed small scale recreation and tourist use is to provide five (5) cabins for nightly rental along with the existing cabin, which will be used as the caretaker residence.
- 26.3 No more than 6,500 square feet of gross floor area shall be devoted to buildings and structures for each ten acres of land area within the project site. Caretakers' residences authorized herein may be in addition to the 6,500 square feet of gross floor area for other buildings and structures.
- 26.3.1 Per the Assessor's records, there are currently no structures on Parcel A and an 888 sq. ft. existing dwelling (to be used as caretaker's unit) on Parcel B. The applicant is proposing five (5) cabins, each approximately 320 sq. ft. in size, for a total of 1,600 sq. ft. of lot coverage. Being as the subject properties are a combined 2.0 acres, the total allowable gross floor area of building and structures on site may be 6,500 sq. ft.
- 26.4 One single-family dwelling unit may be allowed for each twenty acres of land within the project site for the use of on-site staff or landowner. The permitted residence may be a detached residential unit, or it may be part of an overall structure that includes additional services, as allowed by existing building codes, including but not limited to: an office, convenience store, recreation/game room, laundry, bathrooms, showers, etc. Such facilities are intended to serve the needs of the park facility users and staff only. New residential development shall not be permitted on the site for year-round or second home residential housing, except as permitted herein for an on-site manager, caretaker, or landowner.
- 26.4.1 Based on the site plan of record and application materials, a single-family residence currently exists on Parcel B. This existing residence will be used by the applicant either for their personal use (as a vacation home) or for a caretaker's unit; no new residential dwelling units are proposed.
- 26.5 Lodging facilities associated with small-scale recreational or tourist uses shall meet the following standards:
- 26.5.1 Permitted lodges may include additional services to be located within the structure, as allowed by existing building codes, including but not limited to the following: office, convenience store, recreation/game facilities, laundry, bathrooms, showers, etc. Such facilities are intended to serve the needs of the park facility users and staff only. Commercial uses shall not be opened and/or available for use by the general public.
- 26.5.1.1 No commercial uses are proposed, therefore, this provision would not apply.
- 26.5.2 Campground/RV parks shall meet the general site development requirements of Section 11.93.330, and shall have no more than twenty camp or RV sites or any combination thereof to the maximum of twenty.
- 26.5.2.1 The proposed development does not consist of either camp or RV sites.



- 26.5.2.2 No camp or RV sites are proposed. Therefore, this provision would not apply.
- 26.5.3 As approved by the Hearing Examiner, short-term/temporary occupancy of recreational vehicles for a time period of not more than 10 days during any 60-day period is permitted.
  - 26.5.3.1 Based on the application materials, no RV sites are proposed.
  - 26.5.3.2 No RV sites are proposed. Therefore, this provision would not apply.
- 26.5.4 Mixed use development allows the option to create up to five units within a lodge or five cabin units, and fifteen RV or tent sites, provided all other applicable provisions of this section are met.
  - 26.5.4.1 The proposed development would have five (5) cabin units to be used for nightly rentals.
  - 26.5.4.2 As conditioned, the provisions of this section would be met.
- 27. 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 subject to the recommended conditions of approval.
- 28. An open record public hearing after legal notice was provided was held on April 1, 2020.
- 29. 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.
- 30. The applicant did not appear at the hearing. The applicant was given written notice of the date, place and time of the hearing.
- 31. The following members of the public testified at the hearing/No members of the public testified at the hearing.
- 32. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
- 33. 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 Chelan County Hearing Examiner has been granted the authority to render this decision pursuant to CCC Section 11.93.030.
2. As conditioned, the proposal is consistent with the intent, purposes, and regulations of the Chelan County Code and Comprehensive Plan.
3. Based on the proposed development of five (5) cabins for nightly rentals, the use would meet the definition for small scale recreation and tourist use.
4. Based on the application materials, the proposed development would meet the Section 11.93.370 Small-Scale Recreational or Tourist Use provision.

5. As conditioned and based on the size of the subject property, the proposed development would not exceed the allowable total square footage of floor area.
6. Comments from the reviewing agencies have been considered and addressed where appropriate.
7. As conditioned, the proposal will not be significantly detrimental to the public health, safety and welfare, diminish the value of nearby property or improvements, or disturb persons in the use of property unless the conditional use is a public necessity.
8. As conditioned, the proposal has been designed to minimize adverse effects on neighboring properties, to include at minimum the effects of lighting, transportation, noise, odor, dust, and appearance.
9. The conditions of approval are the minimum necessary to ensure the proposal will comply with all applicable laws and regulations.
10. All conditions placed upon the proposed use are conditions that are measurable and can be enforced and monitored.
11. Public use and interests will be served by approval of this proposal.
12. 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, CUP 2019-008 is 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.

1. Pursuant to CCC 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. Pursuant to CCC Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including the revised site plans date stamped November 4, 2019 or as amended by this decision.
3. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Commercial Building Permit shall be required for each of the proposed cabins.
4. Pursuant to CCC 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.
5. The subject property and final Conditional Use Permit shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Agency Comment response dated January 21, 2020.

6. The subject property and final Conditional Use Permit shall conform to the comments and conditions of approval as found in the Chelan County Public Works Department memorandum dated January 23, 2020.
7. The subject property and final Conditional Use Permit shall conform to the comments and conditions of approval as found in the Chelan-Douglas Health District Comment response dated January 14, 2020.
8. Pursuant to CCC Section 11.93.030, a letter of compliance shall be submitted by the applicant to Chelan County Community Development prior to the commencement of the proposed use. This letter shall include the following:
  - 8.1. A parking and circulation plan approved by Chelan County Public Works pursuant to CCC Section 11.93.330(3). The parking plan shall demonstrate the required 10 parking spaces.
  - 8.2. A site plan showing the locations of the following: on-site PUD septic tanks, fenced garbage collection areas, and proposed landscaping.
  - 8.3. Documentation from the Chelan County Fire Marshal that fire flow requirements and access road have been satisfied.
9. Pursuant to RCW 27.53.020, prior to ground disturbing activities, consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP) shall be required.
  - 9.1. Per comments received from DAHP, a Cultural Resource Assessment for the project was prepared by Dave Iversen and Brandon Sybrowsky of ASM Affiliates, Inc. dated March 2020. The assessment concluded that unidentified cultural resources are unlikely to be present within the project area and no further recommendations were suggested. Therefore this condition of approval has already been met.
10. 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.
11. Pursuant to CCC 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.

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 1<sup>st</sup> day of April, 2020.

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.