

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)
) FINDINGS OF FACT, CONCLUSIONS
PA 2019-007) OF LAW, DECISION AND CONDITIONS
) OF APPROVAL
Cook)

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on April 15, 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 Plat Amendment submitted by James and Leah Cook (owners) to remove notes # 1 and #4 on the Plat of Lester Addition so that the subject property can be subdivided. Note #1 reads "No subdivision of any lot shall be permitted." and Note #4 reads "There shall be no access from any lot to the state highway." An associated application was also submitted to subdivide the subject property that is 2.03 acres in size within the Rural Waterfront (RW) zoning district into three (3) residential lots as allowed by Chelan County Code Section 11.16.020(1). Proposed Lot 1 will be 1.05 acres in size and will include the existing house, shop, and two outbuildings. Proposed Lot 2 will be 0.51 acre in size and Lot 3 will be 0.48 acre in size. Primary access for Lot 1 will continue to be from Fir Road, access for Lot 2 will be from Lake Wenatchee Highway, and access for Lot 3 will be from Fir Road as well. Domestic water for all three lots will be provided from the Lake Wenatchee Water District and sewer will be provided by the Chelan County PUD Wastewater division. The Director of the Department of Community Development will issue a final decision on the related Short Plat Application.
2. The applicants are James and Leah Cook, PO Box 490, Leavenworth, WA 98826 and the agent is Brian Baker, Munson Engineers, 894 Hwy 2 Suite H, East Wenatchee, WA 98802
3. The project location is 16632 Fir Road, Leavenworth, WA 98826.
4. The property is outside of an Urban Growth Area.
5. The zoning district is Rural Waterfront (RW) and the existing land use is Residential.
6. The legal description is Lot 2, Lester Addition and the Parcel No. is 27-17-18-665-010.
7. The site size is 2.03 acres.
8. The property to the north of the subject property is Residential; Rural Recreation/Residential (RRR).
9. The property to the south, east and west of the subject property is Rural Waterfront (RW).
10. The applicant submitted an Aquifer Recharge Area Disclosure Form, date stamped December 9, 2019. Pursuant to Chapter 11.82.040, Chelan County has determined that the aquifer recharge measures do not apply
11. Pursuant to the Federal Emergency Management Agency, FIRM map panel 5300150750B, 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
12. Pursuant to the Chelan County Geographical Information system, the property does not contain potential geologic hazardous areas. Therefore Chelan County Code Chapter 11.86, Geologically Hazardous Areas Overlay District, do not apply.
 13. Pursuant to the National Wetlands Inventory Map the property does not contain known wetland(s), therefore, Chelan County Code Chapter 11.80, Wetland Areas Overlay District, does not apply.
 14. A cultural resource study is not necessary, but an inadvertent discovery plan would be required at time of building permit submittal. 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 recommends notification if any artifacts are uncovered or discovered during the development of the proposed subdivision.
 15. Pursuant to the Washington State Department of Natural Resources FPARS stream typing map, the property does not contain any known stream(s). Therefore, Chelan County Code 11.78 does not apply. 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 not contain any conservation habitat areas; therefore, the provisions of Chelan County Code Chapter 11.78 do not apply.
 16. On September 5, 2019 a pre-application meeting was held to discuss the feasibility of the proposed development.
 17. The property is accessed from Fir Road, a Rural Local Access Road in the county road system per Chelan County Code Section 9.09.010. Fir Road is off of Lake Wenatchee Highway, which is classified as a Rural Major Collector Road in the county road system per Chelan County Code Section 9.09.010.
 18. Chelan County Public Works comment letter, dated January 24, 2020, states that a stormwater analysis will be required prior to the submittal of Blue Lines if the proposed Short Plat meets or exceeds the applicability requirements of Chelan County Code Section 13.16.010(2).
 19. A water availability certificate, dated November 14, 2019, from the Lake Wenatchee Water District, was submitted along with the application demonstrating that the subject property would served by the Lake Wenatchee Water District for domestic water. A sanitation availability letters from Chelan-Douglas Health District, dated December 3, 2019, was submitted along with the application demonstrating that the subject property would be served by the Chelan County PUD for sanitary sewer service.
 20. 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 short plat.
 21. The comment letter from the Chelan County Fire Marshal, date stamped January 20, 2020, states the subject property is located within Fire District #9 and that there is adequate fire flow to serve the proposed short plat.
 22. The comment letter from Chelan County Assessor, date stamped January 8, 2020, states the legal description appears to be correct and there are no delinquent taxes.
 23. Noise impacts are addressed in Chelan County Code Chapter 7.35.

24. The Notice of Application was referred to surrounding property owners within 300' (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:

| Agencies Notified | Response Date | Nature of Comment |
|---------------------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chelan County Public Works | January 24, 2020 | No road improvements are required to either Fir Road or Lake Wenatchee Highway. The applicant shall prepare a Joint Access Easement Maintenance and Upgrading Agreement appurtenant to all the proposed lots having a vested interest in the shared/common access easement. The applicant is required to submit an Addressing/Lot Access plan. Lot 2 may access from Lake Wenatchee Highway and Lot 3 shall access from Fir Road. |
| Chelan-Douglas Health District | January 15, 2020 | Recommend further approval; completion of water system improvements and sanitary sewer service improvements, including necessary easements, must be accepted in writing from the utility prior to final plat approval. |
| Chelan County Fire Marshal | January 20, 2020 | There is adequate fire flow to serve the proposed short plat. |
| Chelan County PUD | January 9, 2020 | Power is available at this property. Additional easements may be required and will be obtained by the PUD if not included in the short plat. A primary line extension may be required. |
| Chelan County Assessor | January 8, 2020 | Verified title holders are James and Leah Cook and that there are no delinquent taxes. |
| WA Department of Ecology | No Comment | |
| Fire District #9 | No Comment | |
| WA State Archaeology | No Comment | |
| Yakama Nation | No Comment | |
| Confederated Tribes of Colville | No Comment | |

25. No public comments were received for either the proposed plat amendment or the proposed short plat.

26. The application materials were submitted on December 9, 2019.

27. A Determination of Completeness was issued on December 30, 2019.

28. The Notice of Application was provided on January 7, 2020.
29. The Notice of Public Hearing was issued on April 3, 2020.
30. Pursuant to WAC 197-11-800(6), the proposed development is exempt from State Environmental Policy Act (SEPA) review.
31. The Chelan County Comprehensive Plan states the purpose of the Rural Waterfront (RW) designation is to “Provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas provide a distinct water related lifestyle. Potential impacts to the surrounding area, critical areas, and water quality shall be addressed. These areas must be clearly identifiable as existing intensely developed rural shorelines; where a logical boundary can be delineated and set by the built environment. Such a boundary shall not permit or encourage a new pattern of sprawling low density or urban type development”. Uses appropriate for these areas include: Open space and developed open space; residential; agriculture; and forestry.” Staff finds that the proposed short plat, as conditioned, is consistent with the Chelan County Comprehensive Plan.
32. The project is consistent with CCC Section 11.16.020, (RW) Zoning Code, in the following respects:
 - 32.1 The subject property is within the Rural Waterfront (RW) zoning district, as delineated on the zoning map, as adopted by Chelan County.
 - 32.2 Development in this district shall meet all applicable provisions of this title and all other rules, regulations and provisions of the Chelan County Code (CCC), including the following:
 - 32.2.1 Minimum Lot Dimensions - 12,000 square feet
 - 32.2.2 Lot Width - 70 feet at the front lot line
 - 32.2.3 Maximum Lot Coverage - 35 percent
 - 32.3 The site plan, dated December 9, 2019, indicates all proposed lots meet the development standards of the Rural Waterfront zoning district. Setbacks for new structure(s) on any of the proposed lots will be reviewed at the time of building permit
33. Chelan County Code Section 12.08: Standards:
 - 33.1 The staff report that was prepared for the proposed short plat (SP 2019-041) is attached in Appendix A of this document and details how the proposed short plat meets the requirements of Chelan County Code Section 12.08.
34. Chelan County Code Section 12.22.020: Plat Alteration:
 - 34.1 Except as provided herein for boundary line adjustments, the alteration of any subdivision or portion thereof shall proceed according to the provisions of this title for plat alterations.
 - 34.2 The proposed alteration was submitted in accordance with this title.
 - 34.3 The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered.

- 34.4 The proposed alteration is to remove notes # 1 and #4 on the Plat of Lester Addition. Note #1 reads “No subdivision of any lot shall be permitted.” and Note #4 reads “There shall be no access from any lot to the state highway.”
- 34.5 Five (5) of the eight (8) lot owners have signed the application. Therefore, this provision has been met.
- 34.6 If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.
- 34.7 Pursuant to Section 12.22.010 of Chelan County Code, “Chelan County is not responsible for notification or enforcement of covenants to deed restriction or restriction or reservations affection 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 assumes all risk and liability for any claims and liabilities for covenants or deed restrictions or reservations.”
- 34.8 No covenants were recorded with the Lester Addition plat in 1964.
- 34.9 The alteration of a subdivision is subject to RCW 64.04.175.
- 34.10 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.”
- 34.11 Currently there are no easements of the subject property.
- 34.12 If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.
- 34.13 The development is not within any assessment district. Therefore nothing needs to be divided prior to recording of this plat alteration.
- 34.14 After approval of the alteration, the applicant shall submit to the county a revised drawing of the approved alteration of the subdivision, which after signature of the approving authority shall be filed with the county auditor to become a lawful plat of the property.
- 34.15 The applicant would be required to submit blue-line drawings and final plat to the Chelan County Department of Community Development for review and approval prior to being filed with the Chelan County Auditor’s Office.
- 34.16 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.
- 34.17 The revised plat shall be surveyed and prepared by a Washington State licensed land surveyor.
- 34.18 Part of the application materials include the original St Brendan Place Phase I indicating which note is to be removed.

- 34.19 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.
35. The Lester Addition plat was originally recorded on April 20, 1964, under Chelan County Auditor File Number (AFN) 619842.
 36. A preliminary plat alteration application and associated short plat application was submitted to Chelan County on December 9, 2019.
 37. The subject property is 2.03 acres.
 38. The subject site is located at 16632 Fir Road in Leavenworth, WA and identified by Chelan County Assessor's Parcel Number 27-17-18-665-010.
 39. The owners are James and Leah Cook.
 40. The application materials were accepted as complete by Chelan County on December 30, 2019.
 41. The subject property is located in the Rural Waterfront (RW) zoning districts of Chelan County.
 42. The Chelan County Comprehensive Plan Land Use designation is Rural Waterfront (RW).
 43. Appropriate notice of application and public hearing was referred to appropriate local agencies, mailed to property owners within 300 ft. of the subject property (excluding 60 ft. of street rights of way), posted on site, and published in the newspaper in accordance with Chelan County Code Title 14 Development Permit Procedures and Administration.
 44. Referral comments received from agencies have been considered in the review of this application.
 45. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
 46. Pursuant to WAC 197-11-800(6), the proposed development is exempt from State Environmental Policy Act (SEPA) review.
 47. An open record public hearing after legal notice was provided was held on April 15, 2020.
 48. 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.
 49. Appearing and testifying on behalf of the applicant was James Cook. Mr. Cook testified that he and his wife were the applicants in this matter. Mr. Cook, in response to concerns of the Hearing Examiner, indicated that requiring the second, new lot to be accessed off of Fir Road would create a 200' driveway that would be very expensive to plow in the winter. Mr. Cook testified that all of the proposed conditions of approval were acceptable and that he agreed to a condition that would prohibit any snow from the lot being deposited onto the highway or right of way.
 50. No member of the public testified at this hearing.
 51. 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. The proposed land division was processed consistent with Chelan County Code Section 14, Development Permit Procedures and Administration.

3. As conditioned, the proposal is consistent with Chelan County Code Title 11 Zoning, Title 12 Land Division, Title 13 Environment and Title 15 Development Standards.
4. As conditioned, the public use and interest would be served by the proposed short subdivision.
5. As conditioned, public facilities and services necessary to support the short subdivision would be adequate and available concurrently with the demand for such services.
6. As conditioned, this proposal is compatible with adjacent uses and would not harm or change the character the surrounding area.
7. As conditioned, the subdivision would not lower the level of service standard for public facilities and services below locally adopted levels.
8. 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 Short Plat/Plat Amendment recording.
9. 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 2019-007 is hereby **APPROVED**, and preliminary approval of SP 2019-041, subject to the attached 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 Chelan County Code Chapter 12.24 as amended, 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 and Short Plat shall be designed in substantial conformance with the Preliminary Plat Alteration and Short Plat of record, date stamped December 9, 2019 on file with the Chelan County Department of Community Development, except as modified herein.
3. Pursuant to Chelan County Decision for Lester Addition and SP 2019-041, this Plat Alteration is subject to all Conditions of Approval, except as changed by this decision together with the original short plat decision.
4. Pursuant to Chelan County Code Chapter 12.22, as amended, the applicant shall provide an agreement signed by all parties agreeing to remove notes #1 and #4 on the face of the Lester Addition plat.
5. No snow shall be deposited by the applicant or their agents onto the highway or the right of way. All plowed snow must remain on the applicant's property.

Approved this 21st 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.