

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)
)
PA 20-001)
Mountain Vista Estates)

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 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 to revise a note on the face of the recorded plat, Mountain Vista Estates. Note #21 on the recorded plat, AFN: 2433881, states: "Tract A, B, C, D (open space tracts) pursuant to 12.28.060(1), shall be held in reserve as open space and shall not be used as a building lot or encroached upon in any manner that is not in conformance with current minimum standards, until such time as further subdivision and/or development would be allowed in conformance with the standards of the zoning district in which the rezoned property is located. If this tract is to be developed, the existing lots allowed from the original cluster subdivision must be included when calculating the maximum number of lots allowed on this tract." The applicant is seeking to revise the language of Note #21 to state, "Tracts A through D are defined as common open space and shall not be used for any building or encroached upon in any manner. These tracts will be owned and maintained by the Homeowner's Association."
2. The applicant is Matt Bergy, Birch Mountain, LLC, 7700 SW River Rd, Hillsboro, OR 97123. The agent is Michelle Taylor, Northwest Geodimensions, 15 N. Chelan Ave, Wenatchee, WA 98801.
3. The subject subdivision is located in Wenatchee off of Burch Mountain Road.
4. The legal description is Mountain Vista Estates recorded March 15, 2015, under AFN: 2433881.
5. The property is outside of an Urban Growth Area.
6. The current Comprehensive Plan designation and zoning district is Rural Residential/Resource (RR5).
7. The existing land use is Residential subdivision.
8. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. of right of way) of the project boundary, jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on February 28, 2020 with comments due March 13, 2020. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. No public comments were received. 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 Fire Marshal	March 9, 2020	Approved—no concerns.
Chelan County Building Official	No comments	
Chelan Douglas Health District	March 11, 2020	No change in requirements for drinking water and septic systems before issuing building permits.
Chelan County Public Works	March 12, 2020	Require all necessary signatures for the request change of the plat.
Chelan County PUD	No comments	
WA Dept. of Ecology	No comments	
Chelan County Fire District No. 1	No comments	
Wenatchee School District	March 11, 2020	The access road is private and will not be used for school bus routes.
WA Dept. of Archaeology & Historic Preservation	No comments	
Yakama Nation	No comments	
Confederated Tribes of Colville	March 9, 2020	No comments at this time; in event of future developments, recommendations were provided.

9. The application materials were submitted on January 13, 2020.
10. A Determination of Completeness was issued on February 25, 2020.
11. The Notice of Public Hearing was issued on April 3, 2020.
12. Pursuant to WAC 197-11-800(6), the proposed application is exempt from SEPA review.
13. The project is consistent with Chelan County Code (CCC) 12.22.020 in the following respects:
 - 13.1 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.
 - 13.2 The proposed alteration was submitted in accordance with this title.
 - 13.3 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.
 - 13.4 There are 20 lots in the plat of Mountain Vista Estates. Therefore, 11 property owners' signatures are required to achieve a majority. With the application, signatures for over 11 lots, including the open space tracts owned by the Mountain Vista Estates Home Owner's Association, were provided for the proposed amendment.
 - 13.5 The majority of the affected owners have signed the application, therefore, this provision can be satisfied.

- 13.6 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.
 - 13.7 The plat of Mountain Vista Estates does have restrictive covenants. However, the proposed change to the note would not result in violation of the recorded covenants.
 - 13.8 The proposed note would not result in a violation of the recorded plat covenants. Therefore, this provision would not apply.
 - 13.9 The alteration of a subdivision is subject to RCW 64.04.175.
 - 13.10 The proposed alteration is to revise a note on the face of the plat.
 - 13.11 The proposed alteration is not to extinguish or alter an easement. Therefore, this provision does not apply.
 - 13.12 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.
 - 13.13 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.
 - 13.14 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.
 - 13.15 Staff recommended a Condition of Approval that the applicant must meet the final platting standards outlined in Chelan County Code Chapter 12.24.
 - 13.16 The revised plat shall be surveyed and prepared by a Washington State licensed land surveyor.
 - 13.17 As submitted with the application materials, the site plan was prepared by a licensed surveyor.
 - 13.18 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.24.1 The proposed alteration would relocate the 6 ft. walking easement from the center of the combined Lot 9 & 10 parcel to the southeastern property line. The owners of combined Lots 9 & 10 as well as the board president of the Three Lakes Estates Maintenance Board provided signatures for the application.
14. The applicant is seeking to revise the language of Note #21 to state, "Tracts A through D are defined as common open space and shall not be used for any building or encroached upon in any manner. These tracts will be owned and maintained by the Homeowner's Association." The proposed note revision would apply to all lots located within the Mountain Vista Estates Subdivision.

15. The intent of the proposed alteration is to allow the Chelan County Assessor's office to lower the property taxes, as the open space tracts would not be considered buildable lots. The ownership of the open space tracts, A through D, would be transferred to the Mountain View Estates Homeowner's Association for common ownership.
16. Additionally, the applicant proposes to amend Notes #17, 18, and 19 to change the grantor of the recorded documents (Stormwater Agreement, Road Maintenance Agreement, and Restrictive Covenants) from Birch Mountain, LLC to Mountain Vista Estates Homeowner's Association. For this, a plat alteration is not necessary as the content of the documents is not changing but rather the reference of the Auditor's Filing Number.
17. An open record public hearing after legal notice was provided was held on April 15, 2020.
18. 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.
19. 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 property owner. Ms. Taylor stated that all of the proposed conditions of approval were acceptable.
20. Testifying from the public was Tom Rehtin. Mr. Rehtin's position was that there was no authority for this plat amendment and that the assessor's office was not given notice as an affected agency. However, Mr. Rehtin did state that there was no reason to delete the last sentence of Plat Note 21, given the stated purpose of the homeowners for this amendment. He requested that the last sentence of Plat Note 21 stay in the plat note. Ultimately, he requested that the plat amendment be denied.
21. The applicant had no objection to keeping the last sentence of Plat Note 21 in the plat notes.
22. 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 amendment is consistent with the Chelan County Code and Chelan County Comprehensive Plan.
3. 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 20-001 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 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 shall be designed in substantial conformance with the Preliminary Plat Alteration of record, date stamped January 13, 2020, on file with the Chelan County Department of Community Development, except as modified herein.
3. Pursuant to Chelan County Decision for P 2007-009, 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 12.24 and RCW 58.17.215 as amended, the applicant shall provide a signature block for the majority of the affected property owners, referencing their lot number and parcel number, on the final plat alteration and secure all affected property owner's signatures prior to final Plat Alteration approval.
5. Plat Note 21 is revised to state in its entirety:
 - 5.1 "Tracts A-D are defined as common opens space and shall not be used for any building or encroached upon in any manner. These Tracts will be owned and maintained by the homeowner's association. If any of these tracts are later determined to be eligible to be developed, the existing lots allowed from the original cluster subdivision must be included when calculating the maximum number of lots allowed on any particular tract.

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.