

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF
CUP 20-003
River Bend Park Assn.

RECEIVED
MAY 26 2020
CHELAN COUNTY
COMMUNITY DEVELOPMENT

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 May 20, 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. An application for a Conditional Use Permit has been requested by the River Bend Park Association for the installation of an approximately 35,200 gallon domestic water reservoir with associated pump house. The proposed 20 ft. diameter x 15 ft. tall reservoir is to support and replace the existing wooden water reservoirs on adjacent River Bend Park Association properties. With the proposed reservoir, a new 20 ft. x 10 ft. pump house is to be constructed to support an existing on site well.
2. The applicant/owner is River Bend Park Association, PO Box 121, Leavenworth, WA 98826.
3. The subject site is NNA River Bend Drive, Leavenworth, WA 98826.
4. The parcel number for the subject property is 24-18-06-820-185.
5. The subject site is located within the Leavenworth Urban Growth Area (UGA).
6. The Comprehensive Plan designation and zoning designation for the subject site is Residential Low Density 12,000 (RL-12).
7. The subject property is currently undeveloped with no record of permits issued by Chelan County Community Development.
8. The subject property is sparsely vegetated and is generally flat in nature.
9. The property to the north is River Bend Drive, a county right of way and is zoned Residential Low Density 12,000 (RL-12).
10. The property to the south is zoned as Residential Low Density 12,000 (RL-12) and is in the City of Leavenworth.
11. The property to the east is Zelt Strasse, city right of way, and is the City of Leavenworth.
12. The property to the west is zoned Residential Low Density 12,000 (RL-12).
13. The applicant submitted an Aquifer Recharge Disclosure Form with application, dated January 23, 2020. The proposed project would require a vulnerability report, pursuant to CCC Chapter 11.82, as the project is located within a wellhead protection area. Therefore, a Vulnerability Rating Report would be required with building permit application.
14. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain identified habitat. Therefore, the provisions of CCC Chapter 11.78, would not apply.

15. According to the Natural Resources Stream Typing Maps, no streams are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.78, would not apply.
16. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area. Therefore, the provisions of CCC Chapter 11.86 apply to the project. A geological site assessment was submitted with application.
17. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
18. Based on comments from WA Dept. of Archaeology & Historic Preservation, the subject property is located within an area of having a high potential for archaeological 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.
19. Construction would commence upon receipt of all required permits.
20. The subject property fronts River Bend Drive, a county right of way, and Zelt Strasse, a city right of way. The point of access is to be reviewed at time of building permit submittal in coordination with the City of Leavenworth and Chelan County Public Works Department.
21. Chelan County PUD provides electrical services to the subject property.
22. Domestic water is not applicable to this project.
23. Sanitation is not applicable to this project.
24. The applicant must comply with CCC, Chapter 7.35 Noise. Noise is similar to other public uses.
25. The proposed water reservoir and well pump house are to be setback off of the right of way and is not anticipated to create a visual impact to surrounding properties.
26. The applicant submitted an environmental checklist with application on January 23, 2020. 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, and an Optional Determination of Non-significance (DNS) was issued on April 1, 2020. The SEPA Checklist and ODNS are included within the file of record and adopted by reference.
27. 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 March 17, 2020 with comments due March 31, 2020. Agency comments were considered by the Hearing Examiner and, when appropriate, are written as 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 Fire Marshal	March 30, 2020	No objections.
Chelan County Building Official	March 16, 2020	Development shall comply with applicable building codes.
Chelan-Douglas Health District	March 30, 2020	No objections to project approval so long as the project is reviewed and approved by the WA Dept. of Health.

Agencies Notified	Response Date	Nature of Comment
Chelan County Public Works	March 31, 2020	Applicant will be required to comply with stormwater and driveway requirements.
Chelan County PUD	March 18, 2020	Electrical line extensions and necessary easements would be required; an engineering study may be required.
Chelan County Fire District No.3	No Comment	
Cascade School District	No Comment	
WA Dept. of Archaeology and Historic Preservation	March 20, 2020	Due to the project being in an area of high potential for archaeological resources, an inadvertent discovery plan is recommended.
Yakama Nation	No Comment	
Confederated Tribes of Colville	No Comment	
WA Dept. of Ecology	No Comment	
City of Leavenworth	March 31, 2020	Concurs with conditions as recommended by Chelan County Public Works in regards to driveway and stormwater requirements.

28. A public comment was received from Chris Clark on March 31, 2020. Mr. Clark stated that due to current conditions of restricted water access, he is in full support of project approval.
29. The application materials were submitted on January 23, 2020.
30. A Determination of Completeness was issued on March 12, 2020.
31. The Notice of Application was provided on March 17, 2020.
32. The Notice of Public Hearing was provided on May 8, 2020.
33. Leavenworth Comprehensive Plan: The Comprehensive Plan outlines the purpose and intended uses for Residential Low Density 12 land use designation. The proposed water reservoir use would be consistent with the RL 12 designation.
34. Leavenworth Municipal Code, Chapter 18.21: Residential Low Density 12,000 (RL12): The proposed development is located in the RL12 zoning district of the Leavenworth UGA. According to LMC Section 18.21.030(Q), public utility structures are permitted as a Conditional Use. "Public utility structure" pursuant to LMC Section 18.08.377, is defined as "a structure or use, such as a telephone exchange, utility station, pumping station or water reservoir, whose location in a residential zone is necessary to its function."
35. Leavenworth Municipal Code, Chapter 18.52: Conditional Uses: Being as the City of Leavenworth does not specifically provide required review criteria for Public Utilities, the criteria of Chelan County Code Chapter 11.93 for Conditional Use Permits for High and Low Impact Utilities will be applied to this application.

36. Chelan County Code, Section 11.93.040: Conditional Use Permit Criteria: A conditional use permit may be approved only if all of the following review criteria and any special criteria listed in this chapter are met:
- 36.1 All criteria required for a specific use by this chapter can be satisfied.
 - 36.1.1 Criteria for a high-impact utility facility are addressed below.
 - 36.1.2 Based on review of the application materials submitted, the criteria for a high impact utility can be satisfied.
 - 36.2 The design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.
 - 36.2.1 The site plan of record, date stamped January 23, 2020, demonstrates the proposed development would meet applicable zoning setbacks identified in LMC Section 18.21.040.
 - 36.2.2 Water utility facilities are not identified in LMC Chapter 14.12 for off-street parking standards. Pursuant to CCC Section 14.12.150(G), the most comparable use of “fabricating, assembling, processing, packing, or storage establishments, wholesale establishment, freight depot” requires one space per 1,000 square feet of area used. Based on the application materials, the proposed reservoir would have a floor area of 979 sq. ft. and the pump house would be 200 sq. ft.; therefore, the area used would exceed 1,000 sq. ft., requiring an additional parking space. However, the proposed water reservoir development is an unmanned facility and would rarely have multiple vehicles on site.
 - 36.2.3 Landscaping is required per CCC Chapter 15.50. Pursuant to CCC Section 15.50.050, variations in landscaping may be permitted including the allowance for the use of fencing for part or as a replacement for required landscaping area.
 - 36.2.4 Based on the site plans of record, date stamped January 23, 2020, the proposed development would meet the applicable zoning and critical areas regulations.
 - 36.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 36.3.1 The proposed use of a public water system reservoir would meet the definition of public utility structure as the location of these structures are necessary to be located in residential zoning in order to provide its intended function.
 - 36.3.2 The proposed structures are to be setback far enough from the public right of ways. The structures are not incompatible with the surrounding residential development.
 - 36.3.3 As conditioned, the proposed development would not be incompatible with the surrounding uses or character.

- 36.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 36.4.1 The subject property is not identified as a classified resource land nor is it located within a protected critical area.
 - 36.4.2 As conditioned, the proposed development would not be detrimental to the natural environment.
- 36.5 No conditional use permit shall be issued without a written finding that:
 - 36.5.1 After adequate opportunity for review and comment, all providers of water, sewage disposal, schools, and fire/police protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
 - 36.5.2 Chelan County provided a Notice of Application to all providers.
 - 36.5.3 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
 - 36.5.4 No county facilities will be reduced below adopted levels of service as a result of the development.
 - 36.5.5 The proposed development is not anticipated to result in county facilities being reduced as a result.
 - 36.5.6 As conditioned, the proposed development would not result in county facilities reduced below adopted levels of service.
- 36.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
 - 36.6.1 Based on the application materials, the proposed reservoir would have a safety railing and entry latch.
 - 36.6.2 As conditioned, the proposed development would not have an adverse impact on public health, safety and welfare.
- 36.7 Adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Titles 11 and 15 of the Chelan County Code.
 - 36.7.1 Roads, ingress and egress: The subject property is located on a county right of way and a city right of way. Access is to be reviewed at time of building permit submittal in coordination with the City of Leavenworth and Chelan County Public Works Department.

- 36.7.2 Stormwater: The applicant shall comply with CCC Title 13; Chelan County Stormwater Guidelines and Procedure.
- 36.7.3 Parking and Loading: Water utility facilities are not identified in LMC Chapter 14.12 for off-street parking standards. Pursuant to CCC Section 14.12.150(G), the most comparable use of “fabricating, assembling, processing, packing, or storage establishments, wholesale establishment, freight depot” requires one space per 1,000 square feet of area used.
- 36.7.4 Domestic and Irrigation Water: The proposal is a domestic water system.
- 36.7.5 Sanitary Facilities: The proposal does not require sanitary systems.
- 36.7.6 Power: Power is provided by Chelan County PUD.
- 36.7.7 Fire Protection: Fire protection is provided by Chelan County Fire District No. 3.
- 36.7.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Chelan County Code and Leavenworth Municipal Code.
- 36.8 Noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties and to the vicinity can be mitigated or avoided.
 - 36.8.1 Noise and Vibration: Noise and vibration would be temporary during construction of the improvements. Construction noise is regulated by CCC Section 11.88.190 and CCC Chapter 7.35.
 - 36.8.2 Light and Glare: Light and glare is regulated by CCC Section 11.88.080.
 - 36.8.3 Heat, Steam, Odors, Smoke and Dust: The proposed development would not generate heat, steam or odors.
 - 36.8.4 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application.
 - 36.8.5 Water Quality: The proposed development is intended to improve the River Bend water system availability; the completed reservoir would not result in adverse impacts to the wells or aquifer.
 - 36.8.6 Wastes and Physical Hazards: No hazards were identified.
 - 36.8.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
 - 36.8.8 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, as conditioned.

- 36.9 The granting of the proposed conditional use permit is consistent and compatible with the intent, goals, objectives and policies of the comprehensive plan, and any implementing regulation.
 - 36.9.1 The proposed water reservoir facility would be consistent with the goals and policies of the Leavenworth Comprehensive Plan, Leavenworth Municipal Code, and Chelan County Code.
 - 36.9.2 As conditioned, the project is consistent with the Leavenworth Comprehensive Plan, Leavenworth Municipal Code, and Chelan County Code. The design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.

- 40. Chelan County Code, Section 11.93.180, High Impact Utility:
 - 40.1 Equipment storage shall be within an enclosed building.
 - 40.1.1 Based on the application materials, no equipment is proposed to be stored on the subject property. A new well pump facility is proposed and is to be enclosed in a pump house structure.
 - 40.1.2 As conditioned, the proposed well pump facility would be within an enclosed building.
 - 40.2 In all residential districts, no equipment storage shall be permitted on-site.
 - 40.2.1 Based on the application materials, no equipment is proposed to be stored on site.
 - 40.2.2 Equipment storage is not proposed with development. Therefore this provision does not apply.
 - 40.3 The use shall be fenced.
 - 40.3.1 The site plan and project narrative, dated January 23, 2020, does not indicate that the proposed water reservoir would be fenced.
 - 40.3.2 The proposed water reservoir facility is required to be fenced in order to assure public safety and limited opportunity for public access. Therefore, staff recommended a condition of approval that the proposed facility be fenced.
 - 40.4 The use shall be landscaped per the requirements of Chapter 15.50 of this code.
 - 40.4.1 Landscaping is required per Chelan County Code Chapter 15.50. Pursuant to Chelan County Code Section 15.50.050, variations in landscaping may be permitted including the allowance for the use of fencing for part or as a replacement for required landscaping area.
 - 40.4.2 Additionally, per Chelan County Code Section 15.50.055(5), the administrator may waive all or part of the landscaping requirement for safety considerations

- 40.4.3 Being a public water facility, it is beneficial for the security fencing to remain unobstructed by landscaping. Therefore, staff is recommending as a condition of approval the landscaping requirement to be waived.
- 40.5 The minimum lot size in the district that a utility use is located in may be waived on a finding that the waiver will not result in noise or other detrimental effects to adjacent properties.
 - 40.5.1 The subject property is located in the RL12 zoning district of the Leavenworth UGA. The minimum lot size is 12,000 sq. ft. Based on the application materials, the subject property is over 12,000 sq. ft. in area.
 - 40.5.2 The subject property exceeds the required lot size for the RL12 zoning; additionally, the proposed developments exceed the required setbacks for the zoning district and would therefore not result in noise or other detrimental impacts to adjacent properties.
- 40.6 The hearing examiner may impose additional requirements to address issues such as, but not limited to, noise, public health and safety, vehicular access, and odor.
- 41. The proposed 20 ft. diameter x 15 ft. tall reservoir is to support and replace the existing wooden water reservoirs on adjacent River Bend Park Association properties. With the proposed reservoir, a new 20 ft. x 10 ft. pump house is to be constructed to support an existing on site well.
- 42. Public utilities are permitted in the RL12 zoning district of the Leavenworth UGA as a Conditional Use. The proposed use of a public water system reservoir would meet the definition of public utility structure as the location of these structures are necessary to be located in residential zoning in order to provide its intended function.
- 43. Adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Titles 11 and 15 of the Chelan County Code.
- 44. An open record public hearing after due legal notice was held using Zoom video conferencing on May 20, 2020.
- 45. Appearing and testifying on behalf of the applicant was Paul Milan. Mr. Milan testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. Mr. Milan indicated that the applicant had no objection to any of the proposed Conditions of Approval. However, he did ask that the Hearing Examiner review whether the fence and parking requirements be waived (proposed conditions of approval 8 and 9).
- 46. No member of the public testified at the hearing.
- 47. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
- 48. 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. Based on review of the application materials submitted, the criteria for a high impact utility can be satisfied.
3. As conditioned, the proposed development would not be incompatible with the surrounding uses or character.
4. As conditioned, the proposed development would not be detrimental to the natural environment.
5. Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
6. As conditioned, the proposed development would not result in county facilities reduced below adopted levels of service.
7. As conditioned, the proposed development would not have an adverse impact on public health, safety and welfare.
8. All necessary facilities, improvements and services are consistent or conditioned per the requirements of Chelan County Code and Leavenworth Municipal Code.
9. Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, as conditioned.
10. As conditioned, the project is consistent with the Leavenworth Comprehensive Plan, Leavenworth Municipal Code, and Chelan County Code.
11. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 20-003 is hereby **APPROVED**, subject to the following 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 LMC Section 18.52.090, any approval of any application for a conditional use shall:
A) Automatically be for a period of one year from the date of approval; B) At the expiration of its first year of approval, and after review by the community development director and assurance by the director that all conditions of approval have been or are being met, any such approved conditional use may be continued. At any time, the city may at its discretion require that the conditional use permit be reviewed by the hearing examiner, who will have the authority to revise the initial conditions of approval if need for mitigation is determined. All conditions of the permit shall continue to apply throughout the life of the use.
2. 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.

3. Pursuant to CCC Chapter 13.16, the proposed development shall comply with stormwater guidelines and procedures at time of building permit submittal as outlined in the Chelan County Public Works Memorandum, dated March 31, 2020.
4. Pursuant to CCC 11.88.070(2), the applicant shall obtain a driveway/access approach in coordination with Chelan County Public Works and/or the City of Leavenworth.
 - 4.1. If any work is to take place within the public right of way, approval shall be received from the associated jurisdiction.
5. Pursuant to RCW 27.53.060, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/ agent must immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
 - 5.1. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
6. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Commercial Building Permit shall be required for the proposed water reservoir and pump house.
7. The applicant shall provide approval as issued by the WA Dept. of Health for the construction of the improvements to the River Bend Park Water System (PWS ID#72720) with building permit submittal.
8. Pursuant to LMC Section 14.12.150(G), the applicant shall provide one parking space. Parking spaces shall be designed to the standards of LMC Chapter, 14.12.
9. Pursuant to CCC Section 11.93.180(3), the proposed water reservoir shall be fenced.
 - 9.1. If the required fence exceeds an overall height of 7 ft., a building permit shall be required.
10. Pursuant to CCC Section 15.50.055, no landscaping shall be required.
11. Pursuant to CCC Chapter 11.82, the applicant shall submit a Vulnerability Report with building permit submittal.
12. Pursuant to CCC Section 11.86.020, a copy of the geologic site assessment shall be provided with building permit submittal.
13. The applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1.
14. 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.
15. Pursuant to CCC Section 11.93.180(2), no equipment storage shall be permitted on-site.
16. Pursuant to LMC Section 18.52.050, the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plans date stamped January 23, 2020.
17. Pursuant to LMC Section 18.52.070, a change in use, expansion or contraction of a site area, or alteration of structures or uses which are classified as conditional and existed prior to the effective date of the ordinance codified in this title, shall conform to all regulations pertaining to conditional uses.

Approved this 26th day of May, 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.