

DEC 11 2019

## BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

IN THE MATTER OF	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, DECISION AND CONDITIONS
PA 2019-005	)	OF APPROVAL
Farmer	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on December 4, 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 relocate a 6 ft. wide walkway easement. The subject property was originally Lots 9 & 10 of the Three Lakes Country Club Estates No. 2 Subdivision; a Boundary Line Adjustment, BLA 2017-314, was recorded which dissolved the shared property line to consolidate the two lots. With the BLA, the 6 ft. wide walkway easement that straddled the shared property line was not extinguished or altered. The proposed alteration would relocate the existing 6 ft. easement from the center of the combined lot to run adjacent to the southeastern property line.
2. The applicant is Leroy Farmer, 57 Lake Cortez Ln., Malaga, WA 98828.
3. The project location is 57 Lake Cortez Ln., Malaga, WA 98828.
4. The legal description is Lot 9, together with Lot 10, Block 1 of Three Lakes Estates, No 2; also known as Lot A of BLA 2017-314.
5. The property is outside of an Urban Growth Area.
6. The current Comprehensive Plan designation and zoning district is Rural Recreational/Residential (RRR).
7. The existing land use is Residential.
8. The site size is .83 acres.
9. The property to the North of the subject property is Residential and is zoned Rural Recreational/Residential (RRR).
10. The property to the south of the subject property is Lake Cortez, shoreline of statewide significance.
11. The property to the east of the subject property is Residential and is zoned Rural Recreational/Residential (RRR).
12. The property to the west of the subject property is Residential and is zoned Rural Recreational/Residential (RRR).
13. The subject property fronts and accesses off of Lake Cortez Lane, a private road off of Riviera Blvd, a county right-of-way.
14. The property is within Fire District 1.

15. 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 September 24, 2019, with comments due October 8, 2019. The following agencies provided comments:
  - 15.1 Chelan-Douglas Health District responded on September 30, 2019.
  - 15.2 Malaga Community Council responded on October 3, 2019.
  - 15.3 WA Department of Archaeology & Historic Preservation responded on September 26, 2019.
16. The following agencies were notified, but did not respond:
  - 16.1 Chelan County Building Official
  - 16.2 WA Department of Ecology
  - 16.3 WA Department of Fish & Wildlife
  - 16.4 Yakama Nation
  - 16.5 Confederated Tribes of Colville
  - 16.6 Chelan County Natural Resources
17. The following public comment was received:
  - 17.1 Robert Dodge, attorney on behalf of Jeanne and John Barnes, submitted a response on October 7, 2019.
  - 17.2 Jeanne and John Barnes submitted a response on October 3, 2019.
18. The application materials were submitted on August 21, 2019.
19. A Determination of Completeness was issued on September 17, 2019.
20. The Notice of Application was provided on September 24, 2019.
21. The Notice of Public Hearing was issued on November 22, 2019.
22. Pursuant to WAC 197-11-800(6), the proposed application is exempt from SEA review.
23. The project is consistent with Chelan County Code (CCC) 12.22.020(1) in the following respects:
  - 23.1 The proposed alteration was submitted in accordance with this title.
24. The project is consistent with Chelan County Code (CCC) 12.22.020(2) in the following respects:
  - 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.
  - 24.2 All parties with a legal interest that benefit from the easement to be relinquished shall be required to sign the final Plat Alteration.
25. The project is consistent with Chelan County Code (CCC) 12.22.020(3) in the following respects:
  - 25.1 The easement to be relocated was dedicated on the Plat of Three Lakes Country Club Estates No. 2. The easement was not subject to restrictive covenants.
  - 25.2 This provision does not apply.
26. The project is consistent with Chelan County Code (CCC) 12.22.020(4) in the following respects:
  - 26.1 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.”

- 26.2 The affected parties provided signature with the submitted application, date stamped August 21, 2019.
- 26.3 Additionally, the Three Lakes Country Club Estates Maintenance Corporation recorded a release of easements on May 7, 2002, AFN: 2116171 (Exhibit B). This document was to release all the 6 ft. walkway easements as they are reflected on the plat. However, being as the walkway easements were created/dedicated through the face of the plat, a plat alteration is the required tool for amending/altering.
- 26.4 The proposed plat alteration is compliant with RCW 64.04.175. All parties with a legal interest that benefit from these easements shall be required to sign the final plat alteration.
- 27. The project is consistent with Chelan County Code (CCC) 12.22.020(5) in the following respects:
  - 27.1 The properties impacted by the protective easement are not included in an assessment district. The easement is dedicated to the general use of the residents within the recorded plat.
  - 27.2 This provision does not apply.
- 28. The project is consistent with Chelan County Code (CCC) 12.22.020(6) in the following respects:
  - 28.1 The applicant will 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.
  - 28.2 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.
- 29. The project is consistent with Chelan County Code (CCC) 12.22.020(7) in the following respects:
  - 29.1 As submitted with the application materials, the site plan was prepared by a licensed surveyor.
  - 29.2 Staff recommended a Condition of Approval that the applicant meet the final platting standards outlined in Chelan County Code Chapter 12.24.
- 30. This application is to relocate a 6 ft. walkway easement from the center of the combined lot via BLA 2017-314, to run adjacent to the southeastern property line.
- 31. After review of the application and submitted materials, based on the information contained in the application, Staff recommended **APPROVAL** of **PA 2019-005**, subject to Recommended Conditions of Approval.
- 32. An open record public hearing after legal notice was provided was held on December 4, 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 Leroy Farmer. Mr. Farmer testified that he was the applicant and property owner. Mr. Farmer indicated that the applicant concurred with the staff report findings and conclusions. The applicant had no objection to any of the proposed conditions of approval. Further, Mr. Farmer testified that his ultimate plan is to put an accessory dwelling unit above the garage and the easement is required to be moved in order to keep the accessory dwelling unit project moving forward. He testified that during his ownership of this

property, the easement area has never been developed as a trail and has never been used for access to the lake, to his knowledge.

36. Testifying from the public were the following individuals:

36.1 Jeanne Barnes. Ms. Barnes testified that she owns property adjacent to the applicant's property that will be immediately adjacent to the new access area. She testified consistent with her lawyer's written comments, and her own written comments, stating their safety and privacy concerns.

36.2 John Barnes. Mr. Barnes testified that he and his wife live in the property adjacent to the applicant's property and immediately adjacent to the proposed relocated easement. He testified that he and his wife were aware of the location of the easement when they purchased their property. Part of the reason they selected that lot was because the easement was not right next to their property. He would prefer to have the easement abandoned by the homeowner's association.

37. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

38. 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 2019-005 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 August 21, 2019, on file with the Chelan County Department of Community Development, except as modified herein.

3. Pursuant to Chelan County Decision for Three Lakes Country Club Estates No. 2, 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 affected property owners and the Three Lakes Estates' Board President on the final plat alteration and secure all affected property owner's signatures prior to final Plat Alteration approval.

Approved this 11th day of December, 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.