



**KOTTKAMP
YEDINAK
& ESWORTHY**

435 Orondo Ave. | Wenatchee, WA 98801

Attorneys

Andrew L. Kottkamp

Nicholas A. Yedinak

Sean R. Esworthy

Zack Goytowski

Ryan Feeney

February 10, 2020

Chelan County Commissioners
c/o Cathy Mulhall, County Administrator
400 Douglas St., Ste. 201
Wenatchee, WA 98801

RE: 2019 Annual Report

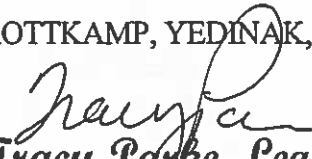
Dear Commissioners:

Enclosed is the Land Use Hearing Examiner's annual report for 2019.

If there are any questions or concerns, please feel free to contact me at your earliest convenience.

Sincerely,

KOTTKAMP, YEDINAK, & ESWORTHY, P.L.L.C.


Tracy Parke, Legal Assistant to:
Andrew L. Kottkamp

ALK:tp
Encl

Cc: David Kuhl (w/enc.) ✓

CHELAN COUNTY LAND USE HEARING EXAMINER **2019 ANNUAL REPORT**

I. INTRODUCTION

The office of Chelan County Land Use Hearing Examiner was created by Resolution 2000-201. I have been serving as the Chelan County Land Use Hearing Examiner since January 1, 2001.

Section 1.61.170 of Resolution 2000-201 requires the Hearing Examiner to report, in writing, to the Board of Commissioners at least once per year. The purpose of this report is to review the administration of the County's land use policies and regulating resolutions, as well as reporting on the number and type of decisions rendered since the prior report. Public hearings are held twice a month on the first and third Wednesday. Also, there are special hearings held as needed.

In 2019, decisions were rendered in the following areas (the numbers of each specific application are in parenthesis): CUP - Conditional Use Permits (10), SDP - Shoreline Substantial Development Permits (30), SV-Shoreline Variance (2) V - Variance (4), WV-Wetlands Variance (4), RIP- Riparian Variance (4), P- Plat (9), CUP-A Conditional Use Permit-Amendments (1), and AA- Administrative Appeal (2), ZC-Zone Change (3), MPR-Master Plan Resort (1), Development Agreement Recommendations (5) and PA-Plat Amendment (6). In this office, I keep track of all shoreline matters under the substantial development permit number. However, shoreline substantial development permits generally involve shoreline conditional use permits, shoreline variances and other shoreline use applications contained within the substantial development permit application. For simplicity, those multiple applications that were included in one shoreline substantial development permit application were counted only once, and all billings were generated under that one application.

This report is on all actions from January 1, 2019, through December 31, 2019.

II. ANALYSIS

Shoreline Substantial Development Permits

There were 30 shoreline substantial development permit decisions. As in years past, shoreline permit applications generally involved the placement of docks and/or boatlifts within Lake Chelan, and the Columbia River or other development within the shoreline jurisdiction.

As stated above, Shoreline Substantial Development Permit applications routinely include additional shoreline permits such as shoreline variances and shoreline conditional use permits. For your purposes, I just want you to recognize that there may be two or three different types of permits that are requested along with a shoreline substantial development permit.

Conditional Use Permits

There were 10 conditional use permit applications. These applications included a multiple wine tasting venue along Chelan Falls Road, a towing and vehicle repair company on property located in Dryden, a new 35,200 gallon water reservoir for the Chelan County PUD on property on Mathew's Road in Wenatchee, a 250,000 gallon domestic water reservoir to support Rock Island Dam maintenance facilities proposed by the Chelan County PUD, an off-site agricultural worker housing facility on Apple Acres Road in Chelan and permits to allow temporary classroom buildings at Sunnyslope and Mission View Elementary schools.

There was a permit application to operate a junkyard/impound lot in the interior of existing buildings and on the outside of the property. The property is located on Beebe Bridge Road in Chelan Falls. There was an application for a conditional use permit, variance and an administrative modification of a front yard setback, and a reduction of the commercial agricultural setback for a new residence/guest inn on property located on Swartout Road in Manson. The guest inn would have 5 bedrooms, each with a private bathroom. There was also a Conditional Use Permit application to install and operate a compost pellet manufacturing facility on Winton Road in between Leavenworth and Coles Corner.

All of the conditional use permit applications were found to satisfy all the criteria of the Chelan County Code for Conditional Use Permits, and were approved. The Hearing Examiner set conditions of approval as authorized by the Chelan County Code, in order to mitigate the actual or potential adverse impacts of the use.

Conditional Use Permits Amendments

There was one application to amend an existing Conditional Use Permit. This amendment application was to vary the required 200' setback, on adjacent property, to allow for the placement of a storage building of property utilized by the Yakama Nations Fisheries Program on property located in Peshastin. This application also included a variance to allow a smaller setback of 125', rather than 200', from adjoining properties. This project was approved.

Variances

There were four variance applications. As the County commissioners are well aware, the variances must satisfy certain criteria in order for a variance application to be approved. Most importantly, there must be some hardship associated with size, topography, or other unique characteristics of the property which necessitates a variance in order for the applicant to be able to use their property. The most interesting request was a request for a variance and shoreline variance in order to reduce a common line setback on Lake Chelan in order to construct a single family residence. The Hearing Examiner found that there was adequate space on this particular lot in which a residence could be built without violating the common line setback and instead only approving the variance on the road side of the property. Common line setbacks on Lake Chelan are utilized to minimize any visual impacts to neighboring property being developed.

Another variance was a request to reduce the 100 ft. setback from a Commercial Agriculture zoning district to 55 ft. in order to create a building area for a single family residence. The property is located on US Hwy 2 outside of Leavenworth. The property borders the Wenatchee River and US Hwy 2. There was public opposition to this project, primarily from a neighboring property owner. Their concern was a setback from the agricultural designated district. Although the property was not currently in agricultural use, it was zoned for this use.

Ultimately, the Hearing Examiner found that the variance request was necessary in order to preserve the property right of the applicant as it was due to a hardship created by the shape of topography of the particular property. The Hearing Examiner granted this variance request.

The final variance was to vary the setback from Echo Avenue on North Shore Drive outside of Leavenworth from 55 ft. to 35 ft., and to vary the setback from North Shore Drive from 55 ft. to 41 ft. You might not have ever heard of Echo Drive. Echo Drive is one of those undeveloped right of ways extending down to Lake Wenatchee. There are still setbacks associated with those right of ways. In this matter, the Hearing Examiner found that the applicant had satisfied his burden of proof, demonstrated compliance with all of the variance criteria, and approved this variance subject to various conditions of approval.

Shoreline Variance

There were two standalone shoreline variance applications. The most notable application was a request to allow an existing residential structure from 25 ft. to 28 ft. above average grade within the Conservancy shoreline environment on Brae Burn Road outside of Leavenworth. The new foundation would increase the height of the existing structure to 28 ft. above average grade in order to protect the residence from flood waters associated with a 100 year flood event. There are strict criteria to be considered before

the Chelan County Shoreline Master Program. The Hearing Examiner found that the applicant had proven all of the required criteria to allow the Hearing Examiner to approve the variance as requested.

Riparian Variance

There were four riparian variance applications. Three of the variances were for residential development. The fourth riparian variance request was from the Washington Department of Fish and Wildlife. This application was interesting because the Fish and Wildlife Department owned a large parcel of land. Although it would have been more convenient for the Department to construct the outbuilding within the riparian buffer, there was room on the property in which the Department of Fish and Wildlife could construct the structure without invading the riparian buffer. In this matter, the Hearing Examiner denied the application finding that the riparian variance criteria were not satisfied.

Plats

There were nine plat applications. The following is the summary of the plats that were approved in 2019. A four residential lot cluster subdivision on 20 acres on Squilchuck Road; 20 residential lots on five acres on Swartout Road in Manson; 12 residential lots on 16 acres on Fish Hatchery Road in Leavenworth; Five residential lots on 42 acres on property Fairview Canyon Road in Monitor; Five residential lots on 26.76 acres on property located on Lower Joe Creek Road in Manson; 40 residential lots on 11.98 acres on property located on Wapato Way in Manson; Five residential lots on 2.72 acres on property located on Lower Monitor Road in Wenatchee; 93 residential lots on 18.9 acres on property located on Easy Street in Wenatchee; and 12 residential lots on 3.5 acres located on Stayman Flats Road outside of Chelan.

All of the above major subdivisions were approved by the Hearing Examiner, subject to various conditions of approval recommended by agencies with jurisdiction and authorized by the Chelan County Code.

Plat Amendment

There were six plat amendment applications. The plat amendments relate to previously approved plats where either the developer or a group of property owners within the plat are requesting that changes be made within the final plat. These have ranged from removing easements and other minor barriers that are currently prohibiting further development of property within the plat. Plat amendments are not easy to obtain. It requires approval of all effected property owners within the plat. In fact, some plat amendments require the entire plat to unanimously agree to the plat amendment. Upon the applicant providing sufficient evidence demonstrating compliance with the Chelan County Code, the plat amendments have been approved. However, for a couple of the requested plat amendments, the hearing had to be continued because there was a misunderstanding

by the applicant as to what was required of the applicant to prove in order to gain the plat amendment. However, in the end, all applicants satisfied the criteria, except for one. That applicant withdrew their application.

Administrative Appeals

There were two administrative appeal matters. The last decision made by the Hearing Examiner in 2019 was a decision on an administrative appeal regarding an administrative interpretation of the Chelan County Code and the Peshastin Urban Growth Area in the District Use Chart as it relates to short-term vacation rentals. In this matter, the Chelan County Director of Community Development rendered an administrative interpretation that short-term vacation rentals are not defined in the Chelan County Code and that the most similar use as defined in the Code would be that of a Rural Tourism, Recreational. The definition of Rural Tourism, Recreational relates to uses involving visits to rural settings or rural environments for the purpose of participating in or experiencing activities, events or attractions not readily available in urbanized areas.

I would note that the Appellant's argument was that a single-family residence could be used, without additional permitting, for any residential purpose, including short-term vacation rentals. However, the Hearing Examiner found that short-term vacation rentals in the nature of bed and breakfast use are different from single family residential use, even though a bed and breakfast may be utilized within a single family residence. In other words, the Hearing Examiner found that there was a distinction between short-term vacation rental use of a residence and long-term residential use.

After making Findings of Fact and Conclusions of Law, the Hearing Examiner affirmed the administrative interpretation. The Hearing Examiner recently learned that the Appellants of the administrative appeal have filed a Land Use petition action in Chelan County Superior Court regarding the Hearing Examiner's decision.

The other administrative appeal was submitted regarding the denial of the Certificate of Exemption. This was an interesting question because the Plat of Dover was approved in 1909, but had never been filed with the Chelan County Auditor. Fast forward to 2018 when there was a new property owner who sought a Certificate of Exemption to further develop her property. The Certificate was denied. In the administrative decision, the County found that the County has discretion to determine that the pre-1937 plat has to meet current subdivision standards. Chelan County had passed an ordinance that allowed County commissioners to review and approve pre-1937 plats so long as they were consistent with current land use regulations. This "lot" was not served by any road, public or private, and in deeds conveying this property, there is no reference to the lot number, but instead just a metes and bounds legal description. The Hearing Examiner found that County actions vacating roads within the plat was not consistent with the plat creating legal lots of record, without first recording the plat. Ultimately, the Hearing Examiner found that a legal lot of record within the original Plat of Dover could not be created

unless, and until, the plat had been recorded. It's interesting that all property within the original Plat of Dover has remained undeveloped to date. Ultimately, the Hearing Examiner made Findings of Fact and Conclusions of Law that require a decision to affirm the County's denial of the Certificate of Exemption.

Zone Change

There were three zone change applications. The first was to change a Recreational Village zoning designation to Rural Industrial on personal property owned by RST Partnership located on Main Street in Monitor. The second was a request to change the zoning designation of approximately 12.56 acres from Urban Residential 1 to Urban Residential 3 in the Manson Urban Growth Area. The property is located on Madeline Road and the property owner was Wapato Heritage, LLC. The final zone change application was submitted by Water Works Properties, LLC to rezone approximately 3.65 acres on US 97A from Rural Residential/Resource 5 to Rural Waterfront.

All of these rezone applications were found to satisfy the criteria set forth in the Chelan County Code and were approved.

Master Planned Resort

There was one Master Planned Resort application. This was an application for a Master Planned Resort to include 24 "glamping" units, a permanent on-site manager's house, a registration building with office space, tasting room space and a gift shop/store. They also planned to have a café, restaurant facility, two restroom and shower facilities, housing for employees and a 14 unit lodge, with a lobby, courtyard, laundry facility and commercial kitchen. There were significant pre-hearing written comments from the public. Although some were in favor of the project, the vast majority were opposed to the project. The open record public hearing in this matter was held on August 21, 2019. There was testimony from the applicant and several members of the public. Multiple exhibits were admitted into the record.

The Hearing Examiner found that this Master Planned Resort could not be achieved with the current water rights. Additionally, the Phase I improvement ("glamping" units) were insufficient to meet the purpose of a Master Planned Resort as a self-contained recreation oriented resort. The Hearing Examiner also found that this Master Planned Resort was inconsistent with Chelan County Comprehensive Plan policies that protect agricultural lands of long-term commercial significance. I would note that the property size was less than 20 acres. After rendering Findings of Fact and Conclusions of Law, the Hearing Examiner found that this project was not consistent with all the required criteria set forth within the Chelan County Code for Master Planned Resorts and was not consistent with the Chelan County Comprehensive Plan and denied the permit application.

Development Agreements.

There were five applications for the Hearing Examiner to make a recommendation on proposed development agreements. Development agreements, as the County commissioners are aware, are agreements primarily negotiated by the Public Works with various applicants, in order to defer road and/or frontage improvements that have been required by either administrative or Hearing Examiner decisions. For these development agreements, the Hearing Examiner makes a recommendation to the Chelan County Board of Commissioners, and it is the Commissioners who make the final decision. On each of these requests for development agreements, the Hearing Examiner did recommend to the County Commissioners to approve the development agreements.

III. CONCLUSION

Throughout the years, I have not been required to remove myself as a Hearing Examiner due to any conflict of interest/appearance of fairness issues.

Hearings have been held and evidence gathered in an orderly fashion. Written decisions have been rendered on a timely basis. While some of my decisions have been appealed, none of the decisions have been returned because of any error in the decision.

I would invite each of you to attend hearings as you can. You will find that I consider it an important part of my duty to allow all members of the public to present the evidence and testimony they wish to be included into the record, so long as it is consistent with the laws as set forth in this state.

In 2019, I served as Hearing Examiner for Kittitas County, Douglas County, Chelan County, Garfield County, Columbia County, Grant County, Whitman County, Klickitat County, City of Chelan, City of Mattawa, City of Wenatchee, City of Entiat, City of East Wenatchee, City of Leavenworth, City of Cashmere, City of Coulee City, City of Grand Coulee, City of Kittitas, City of Rock Island, City of Waterville, City of Quincy, Town of Waterville, City of Dayton, City of Walla Walla and City of Bridgeport. I also serve as Hearing Examiner for Chelan-Douglas Health District.

Once again, I would like to commend David Kuhl and the entire Chelan County Planning Department and staff for their professionalism in the preparation and presentation of their staff reports and their conduct at hearings. Their diligence and hard work make my job easier as they present the application materials and preliminary evidence in a succinct and easily comprehensible format. It allows me to do my job on a more efficient basis which saves the County money. They are always prepared and always professional at hearings. In short, we have a Planning Department of which the entire County can be proud.

I would welcome the opportunity to meet with the Board of Commissioners to allow you to discuss with me any concerns or policy directions of the collective Board. If the Board would like this meeting as well, just let me know and we can work out an agreeable time.

In summary, the Hearing Examiner process continues to be successfully implemented in Chelan County.

Respectfully submitted this 10th day of February, 2020.

CHELAN COUNTY LAND USE HEARING EXAMINER



Andrew L. Kottkamp