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August 5, 2015

Kittitas County Comm. Develop Services
411 N. Ruby, Suite 2
Ellensburg, WA 98926

Re: LP-14-00001

Greetings:

Enclosed please find the Hearing Examiner's Decision regarding the above-referenced matter.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,



KELLY SERVIAN

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**KITTITAS COUNTY
LAND USE HEARING EXAMINER**



IN THE MATTER OF) **RECOMMENDED FINDINGS OF**
) **FACT, CONCLUSIONS OF**
LP-14-00001) **LAW, AND DECISION**
Teanaway Wagon Wheel Plat)

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on July 23, 2015, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law and Decision as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Robert Bailey, authorized agent for John Hamel, Chad Hamel, Linda Ammons, Dwight Watson & Joseph Stehle, landowners, submitted an application packet requesting a plat amendment application to dedicate a new location for the alignment of Boondoggle Road and dedicate a new location for a portion of East Boondoggle Road with no new lots to be created, per KCC Title 16 Subdivisions.

The proposal is located in a portion of Section 26, T21N, R15E, WM, in Kittitas County, Assessor's parcel numbers 577435 (Lot 10), 587435 (Lot 11), 657435 (Lot 12), 667435 (Lot 14), 677435 (Lot 15), 687435 (Lot 16), 697435 (lot 17), 857335 (Lot 18), 837335 (Lot 26) & 847335 (Lot 6).

2. Site Information:

Total Property Size:	11.67 acres, on 9 parcels
Number of Lots:	9; no new lots are being proposed
Domestic Water:	None
Sewage Disposal:	None
Power/Electricity:	none proposed
Fire Protection:	Fire District 7 – Cle Elum
Irrigation District:	None

3. Site Characteristics:

North:	Middle Fork Teanaway Road & private properties
South:	Private properties & the Middle Fork Teanaway River
East:	Private Properties
West:	Private Properties

4. The Comprehensive Plan designation is "Rural Working."

5. The subject property is currently zoned "Forest and Range," which is a 20 acre minimum lot size.

6. A plat amendment application was submitted to Community Development Services on September 8, 2014 and was deemed complete on April 30, 2015. The affidavit of site posting in accordance with KCC 15A.03.110 was received by CDS on May 6, 2015. The Notice of Application was issued on May 14, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on May 29, 2015. SEPA is not required for this application per RCW 58.17.040(6).

7. This proposal is not consistent with the provisions of KCC Title 17.56, Forest and Range and KCC 16.10.010 because:

7.1 Kittitas County Zoning Code Title 17.56 Forest and Range states:

The minimum lot size in the Forest and Range Zone shall be:

1. *Twenty (20) acres, unless within a cluster or conservation plat as provided for in KCC Chapter 16.09, cluster platting and Conservation Platter;*
2. *One-half (1/2) acre for lots in a cluster or conservation plat.*

7.2 Per RCW 58.17.215 the original plat Wagon Wheel P-66-00000 is not vested to the 1966 land use zoning codes. Ultimately this Plat Amendment is a road vacation and boundary line adjustment. Kittitas County Code Title 16.10.010 (2) and (3) state that:

(2). No lot that currently conforms to minimum area and dimension regulations shall be adjusted so as to become nonconforming; and

(3). No nonconforming lot shall be adjusted in a manner that increases the nonconformity.

7.3 The current configurations of the lots are considered legal nonconforming. The proposed Boundary line adjustment to Lots 10, 11 & 12 makes these lots smaller in size and therefore more nonconforming. Because of this, this application is inconsistent with current County Codes. Specifically this project proposes to reduce the size of three (3) lots: Lot 10 from 1.71 acres to 1.63 acres, Lot 11 from 1.69 acres to 1.51 acres and Lot 12 from 1.95 acres to 1.63 acres. The Forest and Range zone is a 20 acre minimum. The existing lots are legal nonconforming but allowing this amendment would increase the nonconformity of these lots.

8. Staff conducted an administrative critical area review in accordance with KCC 17A and found that this proposal is located along the northern shoreline of the West Fork of the Teanaway which is a Shoreline of the State. The applicant applied for a shoreline exemption on July 9, 2015.

9. The proposal is consistent with the Shoreline Master Program. This proposal is exempt from shoreline permitting per WAC 173-27-040 (2) (b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and

external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to *shoreline* resources or environment. Staff determined this exemption appropriate due to the fact that the plat amendment is being applied for so that the lines upon the plat match the road on the ground now. The movement of the lines upon the plat would have no adverse effects to the shoreline.

10. No agency comments were received during the comment period. A late comment was received by Kittitas County Public Works. All comments received are included as hearing exhibits.
11. No public comments were received during the comment period.
12. Public hearing after due legal notice was held on July 23rd, 2015. Appearing and testifying on behalf of the applicant was Robert Bailey. Mr. Bailey testified that he was an agent authorized to appear and speak on behalf of the property owners and applicants. Mr. Bailey agreed that the proposal violated KCC 16.10.010 in a very small way by creating lots that are more non-conforming. Mr. Bailey suggested that KCC 16.10.010 could be ignored in this situation.
13. No member of the public testified at this hearing.
14. The entire Planning Staff file was admitted into the record at the public hearing.
15. The Kittitas County Community Development Services recommended denial of this permit.
16. Admitted into the record were the following exhibits:
 - 16.1 Exhibit 1. KC application fees receipt – 9/8/2014
 - 16.2 Exhibit 2. Plat Amendment application submittal packet – 9/8/2014
 - 16.3 Exhibit 3. Correspondence with Agent– 10/15/2014
 - 16.4 Exhibit 4. Additional Information (Revised Plat) – 12/1/2014
 - 16.5 Exhibit 5. Deem Complete Letter – 4/30/2015
 - 16.6 Exhibit 6. Affidavit of Posting – 5/6/2015
 - 16.7 Exhibit 7. Staff Review Material – 5/12/2015
 - 16.8 Exhibit 8. Notice of Application Legal – 5/12/2015
 - 16.9 Exhibit 9. Notice of Application – 5/14/2015
 - 16.10 Exhibit 10. Affidavit of Mailing & Publication – Notice of Application – 5/14/2015
 - 16.11 Exhibit 11. Inquiry – 5/14/2015
 - 16.12 Exhibit 12. Correspondence with Agent – 5/14/2015
 - 16.13 Exhibit 13. Comment Public Works – 6/23/2015
 - 16.14 Exhibit 14. Hearing’s Examiner Staff Report – 7/16/2015
 - 16.15 Exhibit 15. Notice of Public Hearing Legal – 7/1/2015
 - 16.16 Exhibit 16. Email with Agent – 7/9/2015
 - 16.17 Exhibit 17. Notice of Public Hearing – 7/15/2015
 - 16.18 Exhibit 18. Affidavit of Mailing – 7/15/2015
 - 16.19 Exhibit 19. Notice of Public Hearing Email – 7/15/2015

- 16.20 Exhibit 20. Transmittal of Comments – 7/1/2015
- 16.21 Exhibit 21. Staff’s Power Point Presentation
- 16.22 Exhibit 22. June 21, 2015 Shoreline Exemption Letter from Robert Hansen to the applicant

- 17. The current zoning for the property is Forest and Range which requires a 20 acre minimum lot size.
- 18. The current lots were created in 1966 when the minimum lot size was 1 acre.
- 19. Because the zoning on this property changed after the creation of these lots, and that change required larger lot sizes, the lots created in 1966 for the Wagon Wheel Plat, are legal nonconforming lots.
- 20. KCC 16.10.010 provides that a boundary line adjustment, which is essentially what is being requested by this application, provides “(3) no non conforming lot shall be adjusted in any manner that increases the non-conformity.”
- 21. It is undisputed that this boundary line adjustment will reduce the lot sizes of lot 10, 11, and 12. The reduction of these lot sizes increases the non-conformity of these lots.
- 22. The increase in the nonconformity of lots 10, 11, and 12 are not substantial but, nonetheless, are increases in the nonconformity.
- 23. The Hearing Examiner asked staff, including the Public Works representative, whether there is any provision within the Kittitas County Code that would allow the decision maker to ignore a clear provision of the Kittitas County Code. Staff was not aware of any authority.
- 24. The Hearing Examiner questioned staff as to whether or not a private easement could be created along the existing Boondoggle Road, while vacating the right of way. Staff indicated that all options had been considered and that it was recommended to the applicant to pursue this solution.
- 25. The Hearing Examiner has not been granted the authority to interpret KCC 16.10.010 (3) to read that the prohibition against a boundary line adjustment that increases the non-conformity of a lot only applies if there is a “substantial” increase in the non-conformity. However, the Hearing Examiner understands that the final decision maker may have the authority to interpret this provision as only prohibiting boundary line adjustments that “substantially” increase the nonconformity.
- 26. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

- 1. The Hearing Examiner has been granted authority to render this recommended decision.

2. Kittitas County KCC Title 16 Subdivisions states that no lot within the county can become more nonconforming. This includes lots that are already nonconforming parcels. The Wagon Wheel Plat Amendment must be denied based upon the fact that three (3) of the subject parcels would be made more nonconforming.
3. Because of Conclusion of Law Number 2, the proposal does not meet the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
4. Because of Conclusion of Law Number 2, the proposal is not consistent with Kittitas County Code Title 16 Subdivision.
5. Because of Conclusion of Law Number 2, the proposed use is not consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application LP-14-00001, Teanaway Wagon Wheel, be **DENIED**.

Dated this 5th day of August, 2015.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp