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Via email

Jeremy Johnston
Kittitas County CDS, Planning Official
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926
jeremy.johnston@co.kittitas.wa.us

Re: Georgann Williamson
11798 Manastash Road
Ellensburg, WA

Dear Jeremy:

We represent Georgann Williamson and provide this letter with respect to asserted shoreline violation on property located at 11798 Manastash Road, Ellensburg, WA. We appreciate your summary of key points as included in your email of July 7, 2021. The purpose of this letter is to provide factual information and legal analysis regarding the existence of an established private roadway that constitutes an interrupted buffer under KCC 17.05.050(B)(3). It is our opinion that the provisions of KCC 17.05.050(B)(3) are applicable and controlling in this case.

Your recent email summarized your request with respect to the buffer interruption.

Interrupted buffers may be an option if there was an "existing legally established public or private road" that interrupted the buffer at the time the structure was relocated to its current position. It is my understanding that a document was provided to Code Enforcement that notes the date an easement was established on the property, but I also understand that this easement was subsequently vacated at some point. I would need evidence that the current location of the structure was established when the easement was valid to explore mitigation options.

By way of background, the Williamson property existed for decades with the primary use being a single-family residence with small appurtenant agricultural activities. I have attached several aerial photographs of the property which provide relevant points of reference. *Attachment A*. The accessory structure involved in this matter is a lean-to addition attached to a pre-existing garage/agricultural building. The

lean-to addition was built in 2018. It was attached to a pre-existing garage/barn structure. An easement separated the garage/barn structure from any possible shoreline or wetland areas.

It is not clear that this point that the lean-to actually infringes upon either a wetland or shoreline buffer. The preliminary information received from Kittitas County is that a small portion of the lean-to may fall within the 100' shoreline buffer as measured from the adjacent pond area. For purposes of this letter, we are assuming that there is a minor encroachment on shoreline buffer.

A 30-foot Private Roadway Easement was Established of Record on September 14, 1966.

The Williamson property was subject to two (2) related roadway easements that transected the property from Manastash Road to Manastash Creek. The roadway easements are identified in the Preliminary Title Commitment issued by AmeriTitle on December 1, 2017.¹ *Attachment B*. The roadway easement was created by Statutory Warranty Deed from Edwin S. Sheaffer to Corporation of Catholic Bishop of Yakima as recorded on September 14, 1966 (Instrument No.: 332724). The easement was described as follows:

TOGETHER WITH an easement over and across a 15-foot roadway commencing at the Manastash Road, running southerly to the north boundary line of said property

Attachment D. The easement was expanded to thirty (30) feet by Real Estate Contract between Edwin S. Sheaffer and Colleen M. Sheaffer, husband and wife, and Daniel Chouinard and Gail S. Chouinard, husband and wife, dated October 13, 1978. *Attachment E*. The roadway easement expansion was legally described as follows:

SUBJECT TO an easement 30 feet in width for ingress and egress commencing at the Manastash Road, running southerly to the North boundary line of that portion of the East ¼ of the West ½ of the Northwest ¼ of the Southwest ¼ of the Northeast ¼ lying south of Manastash Creek; the centerline of which is the center of that roadway an 15 foot easement recorded under Kittitas County Auditor's File No. 332724, recorded September 14, 1966, records of said County;

The easement provided ingress and egress from Manastash Road to property lying directly south of the Williamson property. The roadway easement was located on the east side of the garage/barn and separated the garage/barn from the nearby "ice pond".² The roadway easement was reaffirmed by Statutory Warranty Deed from Corporation of the Catholic Bishop of Yakima to Lee Roe and Kathlyn Hitch as

¹ Georgann Mari Williamson purchased the subject property from Stephen Crowley and Susanna Crowley on March 30, 2018. *Attachment C*. The property purchase was subject to "...conditions, covenants, restrictions, reservations, easements, rights and rights-of-way, apparent or of record." The encumbrances included the pre-existing roadway easement.

² The pond located on the Williamson property was artificially created more than a century ago. The purpose of the pond was to provide water from springs for use in an historic ice block business conducted out of an adjacent historic structure. The pond had no connectivity with Manastash Creek until a flood event in 2011 followed by extensive beaver damage of the shoreline area following the flood event.

recorded on June 18, 1985. *Attachment F*. Roe and Hitch aggressively asserted rights under the roadway easement.

The lean-to was constructed in 2018. Following construction, Roe and Hitch alleged that the addition of the “awning” interfered with use of the roadway easement. A *Complaint to Quiet Title* was filed in Kittitas County Superior Court, Cause No. 19-2-00022-19. Plaintiffs included photographs of the “awning”, garage/barn and easement location. *Attachment G*. The allegations clearly reflect the easement as it existed both before and after the construction of the awning or lean-to. There is no factual question that the easement was in existence at the time of the structural addition and remained years following construction.³

The roadway easement bisects the Williamson property and separates the garage/barn structures from the pond area. The structures, including lean-to addition, are located on the landward side of the roadway easement. In addition to the recorded roadway easement, the Williamson property also included private roadways utilized in agricultural activities on the property. The roadway can be seen on aerial photographs. The historic agricultural use of the property can be seen in the aerial photographs. The awning-lean/to was attached to a garage/barn building that was accessory to both the single-family residence and a component of the historic agricultural activities.

The Accessory Structure was Constructed on the Landward Side of the Established Private Road.

One fact is clear in this case and that is that an existing private roadway easement separates the pond area from the garage/barn. The shoreline buffer provisions of the Kittitas County Shoreline Master Program clearly recognize that the Administrator may allow development on the landward side of a legally established public or private road. KCC 17B.05.050(B)(3) specifically provides:

3. Interrupted Buffer: When a shoreline buffer contains an existing legally established public or private road, the Administrator may allow development on the landward side of the road provided that the development will not have a detrimental impact to the shoreline. The applicant may be required to provide a critical areas report to describe the impacts. In determining whether a critical areas report is necessary, the County shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.

There are two uncontroverted facts: (1) a legally established private roadway easement was in existence at the time the awning/lean-to was constructed on the east side of the pre-existing garage/barn structure; and (2) the accessory structure is located on the landward side of the road. The buffer intrusion, if it exists, has no detrimental impact to the shoreline. As seen from the aerial photographs,

³ The litigation commenced by Roe and Hitch was ultimately settled by the parties. The settlement provided for the relocation of roadway access to the Roe and Hitch property through a new easement on the westerly perimeter of the Williamson property. The resolution also included vacation of the roadway easement that bisected the Williamson property. An Easement Grant was filed with Kittitas County Auditor on January 8, 2021.

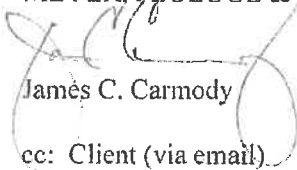
the area has been historically utilized in conjunction with agricultural activities and single-family residential purposes. Williamson is prepared to supplement this information with a Critical Areas Report prepared by a certified professional.

Conclusion

Williamson requests that Kittitas County recognize and apply the provisions of KCC 17B.05.050(B)(3). The accessory structure was allowed under the Shoreline Master Program at time of construction and was compliant with the shoreline buffer provisions related to interrupted buffers.

If you need any additional information, please let us know and we are happy to work with you on the shoreline and wetland issues. Williamson has been actively pursuing, in a separate context, discussions with Washington Department of Fish & Wildlife on a significant buffer restoration and enhancement project that will significantly improve shoreline, hydrologic and habitat environments. We would welcome the opportunity to speak with Kittitas County about these additional important projects.

Very truly yours,
MEYER, BLUEGGE & TENNEY, P.S.



James C. Carmody
cc: Client (via email)

- Attachment A: Photographs
- Attachment B: Title Report
- Attachment C: AmeriTitle Preliminary Title Commitment
- Attachment D: Easement
- Attachment E: Contract between Sheaffer and Chouinard
- Attachment F: Statutory Warranty Deed from Corporation of the Catholic Bishop of Yakima to Lee Roe and Kathlyn Hitch
- Attachment G: Photographs of awning and garage/barn