

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P16-01)	DECISION AND
Ackerman)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on July 21, 2016, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicants are Tadd and Jamie Ackerman Construction, 2755 8th St SE, East Wenatchee WA.
2. General Description: An application for a 6 lot major subdivision. Proposed lot sizes range from 1.0 to 1.16 acres.
3. Location: The subject property is described as Lot 1, Amended Hinderer Short Plat and is further described as being located within the NW Quarter of Section 8, Township 22N, Range 21 EWM, Douglas County WA. The Douglas County Assessors parcel number is 22210820051.
4. Site Information:

Total Project Size:	6.72 acres
No. of lots	6
Domestic Water:	East Wenatchee Water District
Sewage Disposal:	On-site septic
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #2
Telephone Service:	Frontier
5. Site Characteristics: The subject property is in orchard. Three shed structures are present in the southwest portion of the property.
6. The subject property is located within the East Wenatchee Urban Growth Area.

7. The Comprehensive Plan Designation is Low Residential.
8. The subject property is located in the R-L zoning district which allows for subdivisions as permitted uses.
9. On March 28, 2007, Douglas County adopted sections of Title 17 'Zoning' of the East Wenatchee Municipal Code within the unincorporated portions of the East Wenatchee Urban Growth Boundary. The most recent update occurred on July 28, 2015 where the County adopted Ordinance TLS 15-11-31B.
10. RCW 58.17.110(2) requires that appropriate and adequate provisions be made for streets or roads, alleys or other public ways.
11. Lots 1 and 2 will access 10th Street NE directly. Lots 3, 4, and 5 will access 10th Street NE via a Fire Apparatus Access. Lot 6 will access N Nile Ave directly.
12. Frontage Improvements are addressed in Chapter 12.50.150 *Transportation System and Frontage Improvements*, of the East Wenatchee Comprehensive Street Standards. N. Nile Ave is designated as an Urban Collector. East Wenatchee Municipal Code Street Standard, Figure 3-8, Urban Collector is the applicable street standard. 10th Street NE is designated as Urban Local Access Street. East Wenatchee Municipal Code Street Standard Figure 3-7b is the applicable street standard.
13. Section 17.04.040(A), D.C.C., authorizes dedications of right-of-way and improvements to the area directly affected by the development.
14. A Preliminary Stormwater Analysis, dated April 2016, prepared by Ed Zontek, PE, was submitted for the proposed development.
15. In order to meet the state requirements for Enhanced 911 service, all lots within this plat will be addressed prior to final plat approval.
16. The Eastmont School District #206 has determined that the District has adequate school related facilities to support the proposal.
17. The Chelan Douglas Health District has determined that the all proposed lots meet or exceed the state minimum lot size based on public water and soil type. Water, on-site septic systems and power can adequately serve the short subdivision.
18. The Fire Marshall has identified that the application is exempt from fire flow requirements pursuant to DCC 15.28.040 with the proposed lot sizes greater than 1 acre in size and the conditioned plat note requiring all structures maintain a minimum of 50 feet of separation.
19. The subject property is located over 1,500 feet from any existing public sewer line and therefore connection to sewer is not mandatory under EWMC 17.72.260.
20. The subject property is located outside of the boundary of Douglas County Sewer District No 1.

21. Comments from reviewing agencies have been considered and addressed where appropriate.
22. Douglas County issued a Determination of Nonsignificance on July 7, 2016 pursuant to WAC 197-11-355 (Optional DNS).
23. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
24. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
25. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
26. Section 17.24.150 of the Douglas County Code requires that every subdivision shall be served by a water supply system approved and installed to meet the requirements and standards of the Chelan Douglas Health District.
27. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
28. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
29. An open record public hearing after due legal notice was held on July 21, 2016.
30. The entire Planning Staff file was admitted into the record at the public hearing.
31. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
32. Appearing and testifying on behalf of the applicant were Ed Zontek and Norm Nelson. Both testified that they were agents authorized to appear and speak on behalf of the applicant. Mr. Zontek testified that the access to lots 2, 3, 4 and 5 would occur off of the fire apparatus road off of 10th Street and lots 1 and 6 would access off a joint driveway on Nile.
33. Mr. Nelson testified that he had reviewed the proposed Conditions of Approval and that the applicant had no objection to any of them.
33. No member of the public testified at the hearing.
35. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
36. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.

37. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
38. Any conclusion of law that is more correctly a finding of fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Greater East Wenatchee Area Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 17 Zoning of the East Wenatchee Municipal Code as adopted by Douglas County.
6. As conditioned, the proposal is consistent with Title 17 "Subdivision", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application P16-01 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials of file dated April 28, 2016 and May 2, 2016 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. A plat certificate showing parties of interest from a title company must be submitted with the blueline drawings.
5. The final plat map shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
6. All parties having an ownership interest in the subject property shall acknowledge the plat.
7. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
8. All improvements shall be in place prior to plat finalization or a subdivision agreement must be entered into between the applicant and the County. The subdivision agreement shall specify surety, time frames, etc. If the developer elects to enter into a subdivision improvement agreement, an appropriate financial security such as a surety bond or irrevocable standby letter of credit shall accompany said agreement in conformance with D.C.C. 14.90.
9. The following notes shall appear on the face of the plat:
 - Based on historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. The Washington State Department of Ecology recommends that the soils be sampled and analyzed for lead and arsenic and for organochlorine pesticides. If these contaminants are found at concentrations above the MTCA cleanup levels, the Washington State Department of Ecology recommends that potential buyers be notified of their occurrence. This note shall not be required to be placed on the final plat, if the soils are sampled by a professional with adequate credentials to verify that the site does not contain lead and arsenic and organochlorine pesticides at concentrations above the MTCA cleanup levels.
 - Until such time as adequate water for fire protection is provided a minimum 50 foot separation must be maintained between all structures on or off premise.
 - The fire apparatus access road turnaround shall be kept clear and unobstructed at all times.

- At time of building permit submittal, a site specific engineered stormwater plan and report to retain all runoff from on-site improvements including but not limited to buildings and other impervious surfaces outlining conformance with Douglas County Code 20.34 & 20.36 and EWMC Chapters 13.20 & 13.30 shall be submitted and accepted by the County.
 - Prior to occupancy, certification shall be submitted by the Engineer of Record that the private stormwater improvements and site development have been completed consistent with the accepted stormwater plan and report.
 - Prior to occupancy, a Private Stormwater Operation and Maintenance Covenant Agreement (county standard form) shall be executed for the individual stormwater system and recorded with the County Auditor.
 - Lots within this subdivision shall not be further divided until such time as sewer service is available.
10. During construction, all work associated with the proposed project shall occur between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday. Construction activities on Sunday shall not commence before 8:00 a.m. and shall conclude by 7:00 p.m.
 11. The final plat shall show the location of all easements serving or encumbering the subject property.
 12. To facilitate efficient emergency response affecting public health and safety, an addressing plan shall be assigned by the Douglas County Geographic Information System Coordinator during blue line review of the final plat. Addresses for each lot shall be shown on the face of the final plat mylar prior to final plat approval.
 13. The location of existing utilities (i.e. power, sewer, water and irrigation lines, etc.) and utility and private access road easements shall be depicted on the face of the final plat.
 14. The developer shall install all utilities in accordance with the standards and specifications of the Douglas County PUD, East Wenatchee Water District, and the Greater Wenatchee Irrigation District. All utilities shall be located underground.
 15. Written verification from the Douglas County PUD that easements and improvements have been addressed to their satisfaction, shall be required prior to final plat approval.
 16. Prior to final plat approval, written verification from the East Wenatchee Water District that the requirements of the District have been satisfied and certifying water availability is required.
 17. Prior to final plat approval, written verification from the Greater Wenatchee Irrigation District that the requirements of the District have been satisfied is required.
 18. Written verification from the Douglas County Fire Marshal shall be provided that roadways meet Chapter 15.24.030 Fire Apparatus Access and International Fire Code Appendix D, Fire Apparatus Access Roads for emergency access.

19. Prior to final plat approval the property owner shall sign a No Protest Agreement to include: annexation into the Douglas County Sewer District, formation of a sewer Utility Local Improvement District, Local Improvement District and connection to sanitary sewer within 24 months of notification by the district that sanitary sewer service is available. Written verification from the Douglas County Sewer District No. 1 must be provided that the agreements have been completed.
20. The following language must appear with the Health District signature line:
 - “The Health District makes no representation as to the legal availability of water to this plat.”
21. Final plans for transportation improvements designed by a professional engineer licensed in the State of Washington shall be submitted to and approved by Douglas County prior to construction. Construction plans shall be prepared in accordance with the requirements of East Wenatchee Municipal Code and Douglas County Code Chapters 12, 15, 17 and 18, and the AASHTO Policy on Geometric Design of Highways and Streets, in accordance with the current Douglas County Road Standards as updated at the time of final plat approval, and other applicable code requirements.
22. Final design plans for the improvements in public rights-of-way and affecting existing public facilities require County acceptance prior to the start of construction.
23. Prior to final plat approval, a 1-foot non-vehicular access easement shall be depicted along the project’s western boundary with N. Nile Ave, excluding the location of the approved joint use driveway location serving lots 1 and 6 and access into the stormwater tract. Additionally, a 1 foot non-vehicular access shall be depicted along the project’s northern boundary with 10th Street NE, excluding the location of the approved joint use driveway location serving lots 2, 3, 4 and 5 and access into the stormwater tract.
24. Road improvements associated with this development shall include:
 - Half street frontage improvements to N. Nile Ave in accordance with Figure 3-8, Urban Collector (30 feet right-of-way centered on N. Nile Ave.). Construction of improvements is required prior to final plat approval.
 - Half street frontage improvements to 10th Street NE in accordance with Figure 3-7b, Urban Local Access Street. Construction of improvements is required prior to final plat approval.
 - Proposed lots 2, 3, 4 and 5 shall access via a joint driveway off of 10th Street NE. Applicant to construct a private drive for access to said lots. Proposed lots 1 and 6 may be permitted to access off of N. Nile Avenue via a separate joint driveway. Private drives shall be constructed in accordance with Figure 4-1, Driveways & Access Easements and Chapter 5/Appendix D of the International Fire Code. Coordinate design, review/acceptance with the County Fire Marshal. Access easements shall be clearly identified on the final plat.
 - The designer shall identify the applicable WSDOT Standard Driveway detail to be utilized throughout the development.
25. Per DCC 12.52.020 B.6, a Private Access Operation and Maintenance Agreement shall be executed and recorded with the County Auditor and the Auditor’s File Number be noted on the final plat map.

26. All new or revised driveways and access onto a County Road (including temporary or construction accesses) require an approved access permit as per the procedures in DCC 12.24, Approaches to County Roads.
27. Illumination shall be designed and installed at road intersections (10th Street NE & N. Nile Ave) consistent with East Wenatchee Municipal Code and Douglas County Code Section 12.57.100 Roadway Illumination and follow Douglas County PUD Standards. The applicant shall be responsible for PUD charges for connection of street lights to the transformer or hand hole. A plat note and bonding may be required if illumination is not completed prior to final plat approval.
28. Final plans and right-of-way dedication associated with the location of cluster mailbox units for the subdivision shall be provided. Location to be approved by the County Engineer and USPS Postmaster. The designer shall identify and confirm that the location of the mailboxes is in compliance with intersection design standards. Mailbox facilities along N. Nile Avenue (Urban Collector) would require the construction of a pullout located within County right-of-way and designed in accordance with WSDOT/AASHTO standards.
29. Prior to final plat approval and/or release of financial security, the engineer of record shall provide written certification that the final construction plans for the frontage improvements, any internal roads including driveways/accesses, utility plans, stormwater systems, and site grading plans have been constructed in accordance with the conditions of approval, Douglas County Code, East Wenatchee Municipal Code, the approved construction plans. Monitoring shall be required as determined appropriate by the engineer or geologist of record and in accordance with the Douglas County Road Standards and East Wenatchee Municipal Code, with final reports and certification submitted to Douglas County.
30. Prior to final plat approval, requirements for acceptance of the constructed improvements shall be met in accordance with the Road Standards, including Section 12.56.110 Final Acceptance, and 12.50.110 Performance Assurance, B. Maintenance Performance.
31. Utility installation/replacement/upgrade within the Douglas County right-of-way, including, but not limited to N. Nile Ave. and 10th Street NE shall be approved by Douglas County. A permit to perform work in the right-of-way shall be obtained prior to construction. Damage to existing roads, both public and private, resulting from construction activities (including utility extensions required to provide necessary services to the proposed development) shall be repaired to the satisfaction of Douglas County. The extent of repair and/or replacement will be determined during construction plan review and during field inspection of the proposed work within the right-of-way. Repairs shall be completed prior to final plat approval. Repair of existing road surfaces may include overlays of the existing road surface, full or half width, depending upon the extent of impact to the existing road surface due to the construction activities. Existing moratoriums on public roads may limit utility work to boring or pushing EWMC 12.04 (Public Right-of-Way Excavation) and EWMC 12.16 (Undergrounding of Utilities) and DCC 12.20.060 (Specific Requirements – Underground Utilities).
32. Five foot utility easements are required along all lots or tracts with county road frontage in accordance with the Douglas County Road Standards.

33. A final storm water drainage plan designed by a professional engineer licensed in the State of Washington shall be submitted to and approved by Douglas County prior to construction. Construction and post-construction stormwater shall be addressed in accordance with East Wenatchee Municipal Code, Douglas County Code and the Stormwater Management Manual for Eastern Washington (Ecology). Measures to address stormwater infiltration during frozen soil conditions shall be included, including provisions for overflow. The stormwater plan must have supporting calculations and final "as built" drawings shall be delivered to Douglas County prior to final plat approval. Any modifications to the system during construction shall be analyzed by the engineer and the results provided to the County to demonstrate the constructed stormwater facilities meet the conditions of approval. Recommendations and/or requirements contained within the Final Drainage Analysis shall be incorporated into final project approval, including but not limited to the addition of plat notes and recording of operation and maintenance agreements and/or easements. The designer shall specifically address access for maintenance and inspection in addition to the Site Suitability Criteria included within the SWMMEW.
34. Should measures to address frozen soil conditions and/or extreme weather conditions include the addition of an Underground Injection Control facility, registration of the UIC shall be completed PRIOR to construction.
35. Stormwater detention facilities shall be located on a separate tract, under the functional control of the homeowners association with each lot having an undivided interest in the tracts.
36. Provisions to provide access for inspection and maintenance to the stormwater tract shall be addressed within the design plans, report and on the face of the plat. Access to Stormwater Tract 1 shall be designed such that the maintenance vehicle has the ability to park alongside the tract, but off of County right-of-way.
37. In accordance with the Stormwater Management Manual for Eastern Washington, design and maintenance criteria for infiltration ponds, and the policies of the Greater East Wenatchee Storm Water Utility Management Team, stormwater facilities shall be above ground facilities, located on a separate tract(s) which is adjacent to and provides an emergency overflow to public right-of-way. A downstream analysis of potential overflow impacts shall be provided. This policy provides for maintenance, inspection and access to the facility and provides additional protection to downstream properties from overflows in the event of failure of the stormwater facility.
38. The Engineer of Record shall provide certification that the system has been completed in accordance with the accepted plans, as well as applicable East Wenatchee Municipal Code, Douglas County Code and the Stormwater Management Manual for Eastern Washington.
39. Prior to final plat approval, an operation and maintenance agreement must be executed, recorded and AF# referenced on the face of the final plat regarding the private stormwater facilities. Said agreement shall be executed on standard forms approved by Douglas County. It shall be clearly noted on the face of the plat that Douglas County will not maintain the private stormwater facilities (tracts). The agreement shall specify the homeowners of the subdivision as having responsibility for the long-term maintenance of the private stormwater drainage system within the development.

40. The Preliminary Drainage Report indicates that stormwater is proposed to be infiltrated on site. Infiltration testing shall be performed in accordance with the guidance provided in the Stormwater Management Manual for Eastern Washington prior to acceptance of the final construction plans and stormwater report in order to verify the suitability of the site to accommodate the proposed system.
41. Erosion control measures shall be designed in accordance with the Stormwater Management Manual for Eastern Washington (SWMMEW). Best Management Practices shall be employed to prevent runoff from lowing over the site slopes. Disturbed areas shall be re-vegetated and maintained throughout construction. Final grading shall incorporate permanent erosion control measures which routes stormwater runoff away from site slopes and directed the collected water to appropriate discharge locations.
42. The applicant shall be responsible for preventing mud, dirt and debris from leaving the site, including stormwater runoff from being tracked otherwise discharging onto the public right-of-way or adjacent properties.
43. Individual/common plan of development for this proposal exceeds 1 acre of disturbed ground. This meets the threshold used by the Washington State Department of ecology in administering their General Permit to Discharge Stormwater Associated with Construction Activity. If required, the permit shall be obtained prior to beginning ground-breaking activities. The SEPA document indicates that the applicant will submit a Notice of Intent Application for a Construction Stormwater General Permit. Acquisition of this permit is the responsibility of the applicant.
44. Appropriate measures to prevent sediment from leaving the site shall be maintained until such time as all on-site soils are stabilized. Prior to any on-site grading taking place, a temporary erosion/sedimentation control plan (SWPPP – Stormwater Pollution Prevention Plan), showing the location and control measures intended to minimize the effects of erosion and siltation due to construction operations shall be submitted and accepted by the County. This plan shall be maintained on-site at all times and modified as necessary to address erosion issues as they arise. Additional erosion controls shall be implemented as necessary t prevent sediment from leaving the site.
45. One (1) single access point for construction activities may be approved. A stabilized construction access for the site shall be shown on the Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall be submitted and accepted prior to on-site grading.
46. Preliminary approval shall expire 5 years from the date of Notice of Action by the Douglas County Hearing Examiner. Final plat approval after the expiration will require the submittal of a new preliminary application and approval based on applicable documents and codes in effect at the time of re-application.

Dated this 27th day of July, 2016.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas 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.