

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

Douglas Richard Brewer (Appellant)  
Lynn Brewer (Appellant)  
P.O. Box 145  
Easton, WA 98925

ZONING SETBACK VARIANCE # (VA-12-00002)

DATE OF DECISION: June 18, 2012

DEADLINE and DATE OF FILING OF APPEAL: July 2, 2012

RECEIVED  
JUL -2 2012  
1st  2nd  3rd   
KITITAS COUNTY BOARD OF COMMISSIONERS  
Kirk H.  
Neil C.

NOTICE OF APPEAL

Appellants, and each of them, hereby respectfully request the Kittitas Board of County Commissioners (BOCC) review of the denial by Kittitas County Community Development Services (KCCDS) of the Appellants' zoning setback variance request and submit the following information in support of their appeal in accordance with KCC 15A.07.010(2):

- a. **Decision:** VA-12-00002 Denial of Brewer Zoning Setback Variance
- b. **Name and Address of Appellant:**

Douglas R. Brewer / Lynn Brewer (Homeowner / Applicant / Appellant)  
Mailing Address: P.O. Box 145; Easton, WA 98925  
Physical Address: 770 Kachess River Road; Easton, WA 98925

The interest in this matter is that Appellants are the homeowners of the subject property and Applicants of the Variance

- c. **The reason why the Appellants believe the decision of Kittitas County Community Development Services (KCCDS) is wrong is based upon the following:**

- 1) Unusual Circumstances or Conditions Apply and Preservation of Substantial Property Right Possessed by Other Owners in the Same Vicinity

When Appellants bought their lot in 2004, the property was zoned Forest and Range, which provided for 10' side setbacks. The home AND proposed garage/shop was noted on the original 2004 site plan submitted and

approved by KCCDS at the 10' side setback afforded Appellants under Forest & Range **which Appellants believe grandfathers them in at a minimum of 10' setbacks as established by Forest & Range** (See Exhibit A attached hereto). Unbeknownst to Appellants, their property was subsequently rezoned as Rural Residential, causing the side setbacks to be moved to 15'. Appellants applied for a 5' variance. As Appellants were unaware of the rezoning at the time they applied for the variance, KCCDS sent out Appellants' Variance Application and noted the new Rural Residential zoning setbacks of 15' which if then granted a 5' variance, Appellants would be afforded the same benefit as they had been at the time their building permit was issued in 2004, and the same benefit granted to all other property owners who built prior to the rezoning. If the 5' variance is denied, it means that:

- i. The rezoning has caused **unusual circumstances or conditions to the property or the intended use that does not apply to the other properties in the area** since all other building on lots were done at 10' setbacks afforded by Forest & Range.
- ii. Appellants are being **denied the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same area** who were permitted to build similar shops/garages because they had been built prior to the rezoning.

2) **Variance is Not Materially Detrimental to the Public Welfare or Injurious to Property in the Vicinity**

KCCDS claims that the granting of the variance would be "materially detrimental to the public welfare or injurious to property in the vicinity." Appellants disagree. As noted in the "Proposal" in the Notice of Application prepared and written by KCCDS (See Exhibit B attached hereto):

*"Douglas Brewer has submitted zoning setback variance application to encroach 5 feet into the side setback. The subject property is zoned Rural Residential."*

The Application and language of the Proposal set forth above as written by KCCDS when it sent out the variance for comment established the foundation for the variance as Rural Residential and Appellants have accepted the County's proposed 5' setback variance from Rural Residential would essentially grandfather their property and therefore argue the variance should not have been denied.

The encroachment of 5' into the Rural Residential Side Setback would essentially return the property to Forest & Range and thus would not be detrimental to the public welfare or injurious to property in the vicinity as all

other properties in the sub-division were built at Forest & Range setbacks. Furthermore, the proposed garage/shop was noted on the original site plan in 2004 approved by KCCDS at the 10' setback afforded by Forest & Range and as such Appellants take the position that they are grandfathered in. Meaning, so long as the 5' variance from Rural Residential setbacks is granted to allow building at a 10' setback, both the Appellants and KCCDS are in agreement.

However, Appellants argue that by KCCDS changing its Proposal, after the period of comment, without amendment, and simply denying the variance has left Appellants with no other alternative but to file this Appeal. Appellants believe the confusion over the rezoning has had a detrimental impact on their ability to build and without the 5' variance, returning the property to its prior zoning as approved at the time the site plan was developed, submitted, and approved, Appellants will find themselves unable to build the proposed shop as their home was positioned to allow minimal space to build the proposed shop as set forth in 2004. Appellants now find themselves unduly restricted by the rezoning and the proposed 5' variance provides sufficient remedy without being materially detrimental to the public welfare or injurious to properties in the vicinity.

3) **Decision Adversely affects the realization of the comprehensive development pattern in the area.**

KCCDS claims that the 5' variance, if granted, will adversely affect the comprehensive development pattern in the area. Appellants disagree. The Lake Easton Estates sub-division is a cluster sub-division built under Forest & Range zoning consisting of 52 lots of approximately ½ acre. (*See Exhibit C attached hereto*). With the exception of the handful of lots that have not yet been developed, all homes in the area were built with Forest & Range setbacks and Appellants were approved in 2004 for 10' side setbacks and the proposed shop was duly noted on those plans and therefore approved by KCCDS.

Contrary to KCCDS's argument, **the failure to grant the variance** will have a detrimental impact on the development pattern in the area as **THERE WILL BE UNINTENDED CONSEQUENCES** adversely affecting the comprehensive development pattern in the area as **Lots 39, 41, 43, and 32, as highlighted in yellow on Exhibit C, would likely become unbuildable**, or at the very least, significantly restricted in the buildable area, if no variance is given to Lot 27 as it sets a precedence that would disable the aforementioned lot owners. As noted in the attached letter from lot owner 41 (*See Exhibit D attached hereto*), the rezoning has created a detrimental impact as it increased the side setbacks from 10' under Forest & Range to 15' under Rural Residential and increased backyard setbacks from 10' to 25' substantially reducing the buildable area on each lot, particularly if no relief from the

sanitary protection areas are provided by the state of Washington. Rural Residential set backs are based upon 5 acre lots which allow for sufficient room to build with the greater setbacks whereas Forest & Range cluster subdivisions provide for far smaller lots of ½ acre making the increased setbacks detrimental to homeowners. The impact of a reduction of square footage on a ½ lot is significant when you reduce the buildable area from 5 acres to ½ acre. By its very nature, **the rezoning created unusual circumstances that adversely affect the comprehensive development pattern in the area.**

4) **Health and Safety Issues:**

KCCDS states three reasons the variance is being denied that are capricious when considering Appellants' variance would afford them the same setbacks had no rezoning occurred thus the following arguments are spurious as these issues did not exist prior to the rezoning:

- a. *Be detrimental to the public health, safety, and general welfare;*
- b. *Adversely affect the established surrounding vicinity and planned uses;*
- c. *Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.*

We submit, given all homes to date in Lake Easton Estates have been built under Forest & Range and no “health and safety” issues were present under Forest & Range, the arguments presented by KCCDS in the denial do not meet the doctrine of fairness.

This leaves us to believe that the “public safety issues” relate to a wellhead that sits at the FRONT of the property and although should have had no bearing on the request for a SIDE setback variance, we feel the need to address the matter as part of the appeal since the issue is now part of the official record. Furthermore, any variance related to the wellhead falls specifically under the jurisdiction of the Washington State Department of Health as set forth in the WAC and any granting of a variance to build near the wellhead is to be presented to Washington State Department Health as dictated by the WAC.

Although Appellants have attempted to determine the specific “health and safety” issues KCCDS determined to be present as the basis for the denial (given no such issues existed under Forest & Range), and have been informed verbally by staff member Dan Valoff that the wellhead at the front of the property had absolutely no bearing on the denial, we have strong reason to believe the comments submitted by Mr. James Rivard of Kittitas County Public Health (*See Exhibit D attached hereto*) presented the only health and safety issues upon which KCCDS could have relied.

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

Lake Easton Estates has 9 Group B wells servicing the 52 - ½ acre lots. Group B wells are required to have a 100' sanitary control area. Although the well house for Appellants home sits on the adjacent lot, the wellhead is on Lot 27 owned by Appellants. Mr. Rivard was presented the Water Users' Declaration and CC&Rs for Lake Easton Estates and falsely drew the conclusion:

*“To the best of my knowledge and ability to interpret the attached documents and the documents included within the link, I **have to recommend that the variance be denied.** It appears as though the shop is within the 100 foot sanitary circle. Community water systems such as Group A and Group B **typically** have a restrictive covenant that does not allow for the construction of structures within the sanitary circle to protect public health and the water supply from potential contaminants.”*

The “attached documents” to Mr. Rivard’s email, upon which Mr. Rivard relied, are the Lake Easton Estates Water Users’ Declaration and CC&Rs, as required under the WAC to be filed as part of the installation of the Group B wells. Despite Mr. Rivard’s speculation as to the presence of “restrictive covenants,” no such restrictive covenants exist within Lake Easton Estates either in the Water Users’ Declaration or CC&Rs that prohibit any building within the 100’ sanitary protection area surrounding the wellheads but merely establish the types of building that can occur. This is evidenced by the fact that the **100’ Sanitary Circle of every Group B well in Lake Easton Estates has been encroached except for the one on Appellants’ property.**

For clarification, the specific language regarding the restrictive covenants in the Water User’s Declaration recorded on January 27, 1995 with Kittitas County in Volume 362 Page 1370-1376 (Property Affected Lot 41) and a duplicate copy recorded on January 27, 1995 in Volume 362 Page 1349-1355 (Property Affected Lot 31), state the following:

**“8. Prohibited Practices. No person will construct, maintain or suffer to be constructed or maintained upon the property **above described** and within 100 feet of the well **herein described**, so long as the same is operated to furnish water for public consumption, any of the following: **Septic tanks and drainfields, sewer lines, underground storage tanks, County or State roads, railroad tracks, vehicles, structures, barns, feeding stations, grazing animals, or enclosures for maintaining fowl or animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind.”****

In fact, we actually find **Kittitas County itself has violated Lake Easton Estates Water User’s Declaration, and thus the WAC, by approving the installation of “County roads” within the 100’ sanitary circles (as noted on Exhibit D), despite the specific “prohibited practices.”** Therefore, for Kittitas County to now deny Appellants the opportunity to build within the 100’ setback, when the County itself is in violation of the Water User’s Declaration would be capricious and violate the doctrine of fairness. Presumably if the County Roads encroachment on the 100’ setback do not create a public health and safety issue, then clearly our proposed shop does not, particularly given its limited use and similarities to the uses of other property owners in Lake Easton Estates.

Additionally, the Lake Easton Estates Restrictive Covenants (CC&Rs) recorded on or about the 23<sup>rd</sup> day of February 1990 in Volume 302 page 636-691 Restrictive Covenants (CC&Rs) do not deny the right to build within 100’ of the well, but rather is very specific about what types of building / uses are prohibited, namely:

6.3 Wells and Waterworks. . . .

The Declarant, its successors and assigns, including all Lot Owners, will not construct, maintain or suffer to be constructed or maintained upon the Properties, or any Lot, and within one hundred feet (100’) of any well herein described, so long as the same is operated to furnish water for public consumption, any potential source of contamination, such as **cesspools, sewers, privies, septic tanks, drainfields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pigpens, or other enclosures or structures for the keeping or maintenance of fowls, or animals, or storage of liquid or dry chemicals, herbicides, or insecticides.**"

Except for Appellants’ home, every other home built in Lake Easton Estates on a lot with a Group B well has been afforded the right to encroach the sanitary protection area which demonstrates that KCCDS does not believe building within the sanitary protection area creates any public health, safety and general welfare issues given KCCDS approved every single building permit. Therefore, any argument by KCCDS that the proposed building if built by Appellants within the sanitary protection area is a health and safety issue is capricious. Given our shop will be similar in nature and presumably used for the same purposes as our neighbors, Appellants argue that without a written policy and procedure by the County prohibiting any building, then we believe the proposed building which will encroach the sanitary circle should be allowed. The Public Health Department, as noted in the attached email from Ms. Holly Duncan, *marked as Exhibit F*, Kittitas County bases its standards on the WAC and **no other Kittitas County Code exists which prohibit such building within the 100’ sanitary circles.**

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

To the best of our knowledge, KCCDS has not required a single variance from the State of Washington, prior to issuing building permits within Lake Easton Estates where these homes have encroached the 100' sanitary circle which means, if true, KCCDS has further violated state law. Appellants have an open records request to determine to what extent such actions may have occurred and have been informed that the response to this records request shall be expected by August 31, 2012.

Any variance for building within the sanitary protection area is governed by WAC 246-291-100(4) and thus falls to the State of Washington Department of Health to administer. As noted in the attached email from Danielle Russell from the Washington State Department of Health to Appellants, the State of Washington does allow for building within the sanitary protection areas and has a very specific process for approval of variance requests. (*See Exhibit G attached hereto*). Appellants have begun the process for obtaining the requested variance and expect with a proper mitigation plan, the variance will be allowed but KCCDS is not responsible for the issuance of that sanitary protection area variance and thus should not have based its decision to deny the Appellants' side setback variance application on the location of the wellhead.

d. **Desired outcome:**

Appellants hereby request that the BOCC approve a variance that would grant Appellants the right to encroach the Rural Residential side setback by 5' thereby returning the property to its zoning under which Appellants had been afforded when they bought the property and in accordance with the site plan attached hereto as Exhibit A. Given, this site plan was approved by KCCDS in 2004 when the Appellants obtained their original building permit showing the future garage which they now seek to build, Appellants believe the variance should be approved given their grandfather status. Any issues that KCCDS now claims would prevent Appellants the right to build at 10' setbacks, were created with the property rezoning.

Appellants are willing to avoid any "public safety, welfare or health" issues that could be caused by further encroachment on the side setback by compromising on the variance application and accept KCCDS's position in the Proposal sent out for comment, that the 5' setback variance request was based upon Rural Residential zoning. The side setback would be "grandfathered" to its original state. As noted in *Exhibit H*, Kittitas County has allowed properties to be "grandfathered" when zoning changes occur due to the Growth Management Act responsibilities of Kittitas County.

Appellants further request that KCCDS defer any arguments they may use on the placement of the wellhead and the wellhead protection area to the State of Washington Department of Health as noted in Exhibit G so that Appellants may proceed with the variance process for the wellhead.

Had Appellants' property been zoned Range & Forest and a 5' variance request denied, Appellants could have still built the proposed building at a 10' setback. The fact that the property is now Rural Residential, the only relief Appellants have in order to be able to

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

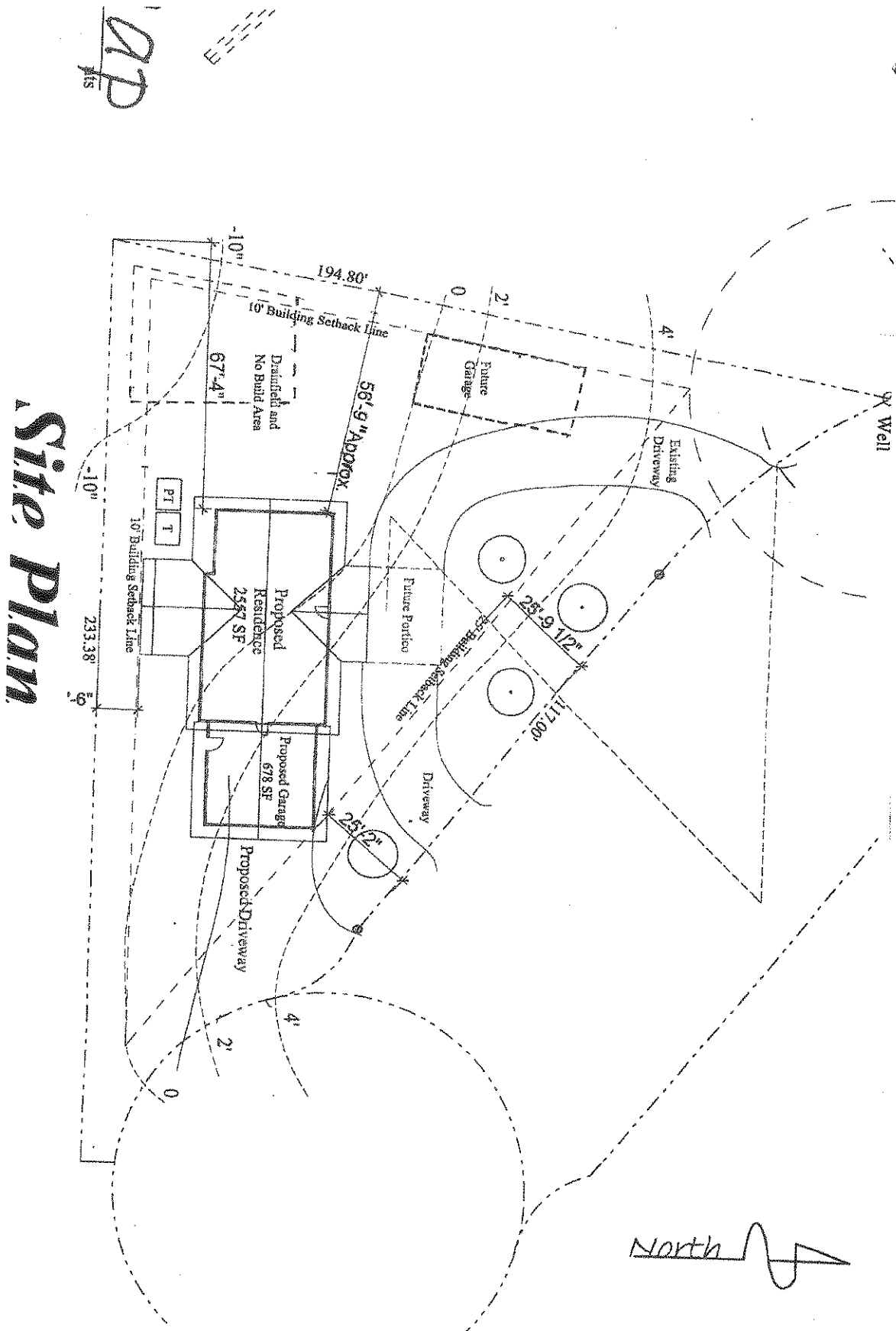
build the proposed shop as set forth in the 2004 site plan is to obtain a 5' variance to return the property to a Forest & Range zoning setback. This means that Appellants are forced to pay an additional \$500 to appeal the matter necessitated only because of the rezoning. Based upon this, Appellants would hereby request a refund of the \$500 fee paid to appeal this matter as we feel as though the rezoning created sufficient unusual circumstances that based upon the written proposal of KCCDS in Appellants' Variance Application would have allowed for the 5' variance from Rural Residential and would have returned the property to Forest & Range making this appeal unnecessary.

e. **Appeal fee has been submitted herewith.**

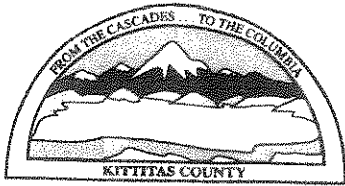
***LIST OF EXHIBITS ATTACHED HERETO:***

- A – Original 2004 Site Plan approved by KCCDS showing “future garage”*
- B – Notice of Application Dated May 22, 2012 as prepared and sent out by KCCDS*
- C – Subdivision Plat Map (COMPAS Mapping System) showing Wellhead Sanitary Protection Areas noted by circles  
Properties highlighted in yellow (unbuildable if no variance is approved)  
Properties highlighted in green (properties where sanitary protection areas have been encroached by buildings)*
- D – Letter dated July 1 2012 from JoDee Marlatt, owner of Lot 41 regarding unintended consequences.*
- E – Email from James Rivard to Dan Valoff regarding restrictive covenants and request that variance be denied*
- F – Email from Holly Duncan of Kittitas County Public Health Department regarding Kittitas County's reliance upon the WAC standards for building within 100' sanitary circles.*
- G – Email from Danielle Russell of the Washington State Department of Health to Appellants regarding process for approval of wellhead variance requests*
- H – Letter from Kittitas County Planning Department to Attorney Dohn regarding “grandfather” of zoning due as part of Kittitas County Growth Management Act.*





**Site Plan**



**KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES**

411 N. Ruby St. Suite 2 Ellensburg WA 98926

[cds@co.kittitas.wa.us](mailto:cds@co.kittitas.wa.us)

Office 509-962-7506

Fax 509-962-7682

Building Partnerships - Building Communities

**NOTICE OF APPLICATION**

**Notice of Application:** Tuesday, May 22, 2012  
**Application Received:** Wednesday, April 18, 2012  
**Application Complete:** Thursday, May 17, 2012

**Project Name (File Number):** Brewer (VA-12-00002)  
**Applicant:** Douglas Brewer

**Location:** 1 parcel, located approximately 2 miles northwest of Easton at 770 Kachess River Road, in a portion of Section 03, T20N, R13E, WM in Kittitas County, bearing Assessor's map number 20-13-03050-0027.

**Proposal:** Douglas Brewer, has submitted zoning setback variance application to encroach 5 feet into the side setback. The subject property is zoned Rural Residential.

**Materials Available for Review:** The submitted application and related filed documents may be examined by the public at the Kittitas County Community Development Services (CDS) office at 411 N. Ruby, Suite 2, Ellensburg, Washington, 98926, or on the CDS website at <http://www.co.kittitas.wa.us/cds/current/setback-variances.asp>. Phone: (509) 962-7506

**Written Comments** on this proposal can be submitted to CDS any time prior to 5:00 p.m. on **Wednesday, June 6, 2012**. Any person has the right to comment on the application and request a copy of the decision once made.

Under Title 15A.03.080 and 17.84.010, zoning setback variances are processed in an abbreviated administrative format, which does not involve a public hearing. All comments will be considered in the decision making process, and any person has the right to comment on this application and receive notification of the Community Development Services administrative decision, once made. Appeals to an administrative land use decision may be filed within 10 working days with the board of county commissioners as outline in Chapter 15A.07 of the Kittitas County Code. The current appeal fee is \$500.

**Designated Permit Coordinator (staff contact):** Dan Valoff, Staff Planner: (509) 962-7506; email at [dan.valoff@co.kittitas.wa.us](mailto:dan.valoff@co.kittitas.wa.us)

  
Signature Planner of Record

5-22-12  
Date

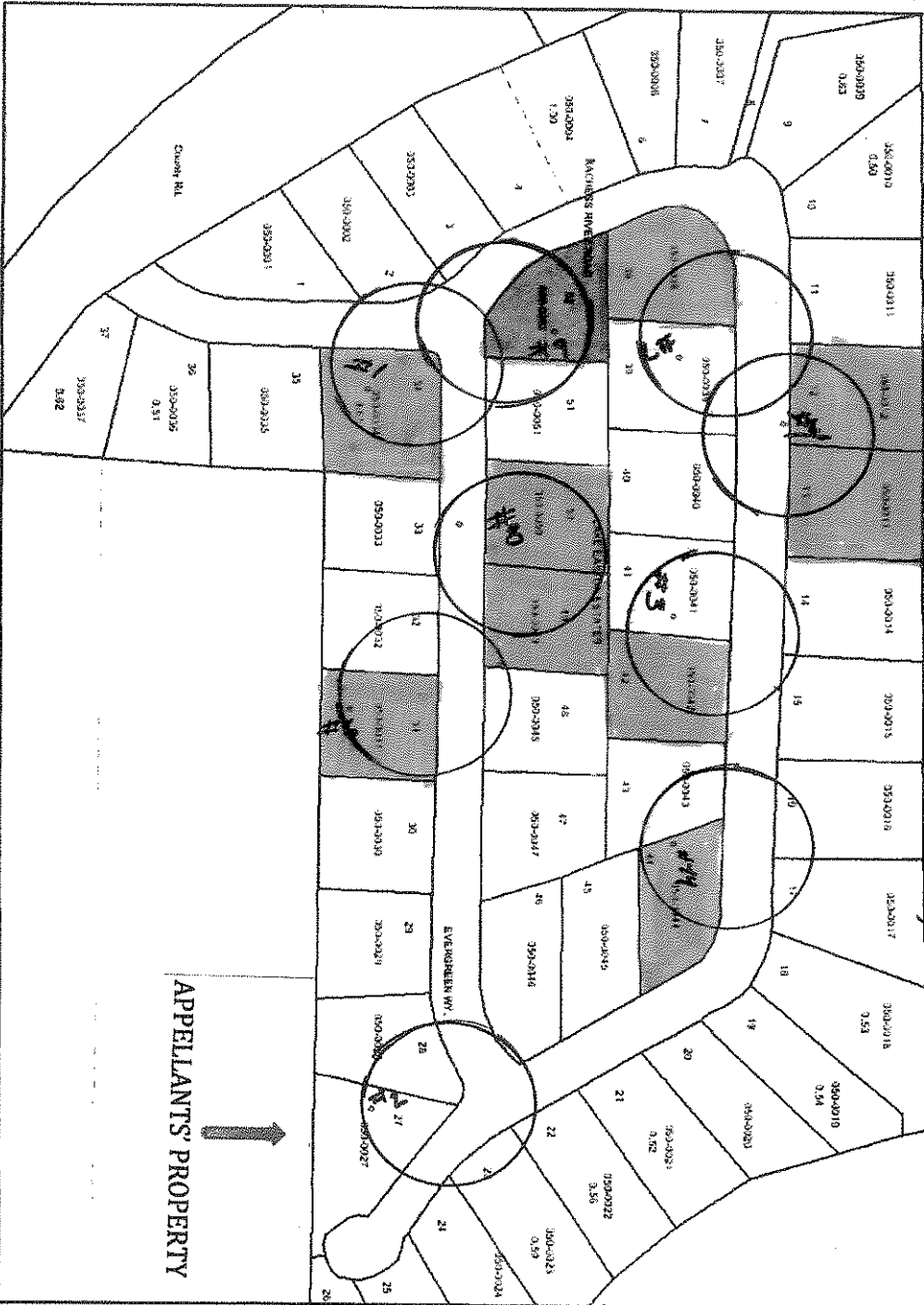
**GREEN** denotes Properties with Buildings **INSIDE 100'** sanitary circle.  
 Building Permits granted KCCDS allowing building within 100' sanitary circle.

**YELLOW** denotes Properties that will suffer unintended consequences if setback variance is denied and no variance for building inside sanitary circle is granted. Precedence will be set causing properties to likely become unbuildable.

PROPERTY OWNER WHO  
 OBJECTED  
 BASED UPON WELL



APPELLANT'S PROPERTY

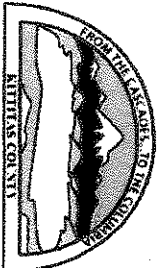


Disclaimer: Kittitas County makes every effort to produce and publish the most current and accurate information possible. No warranties, expressed or implied, are provided for the data provided, its use, or its interpretation. Kittitas County does not guarantee the accuracy of the material contained herein and is not responsible for any misuse or representations by others regarding this information or its derivatives.

COMPAS Mapping System

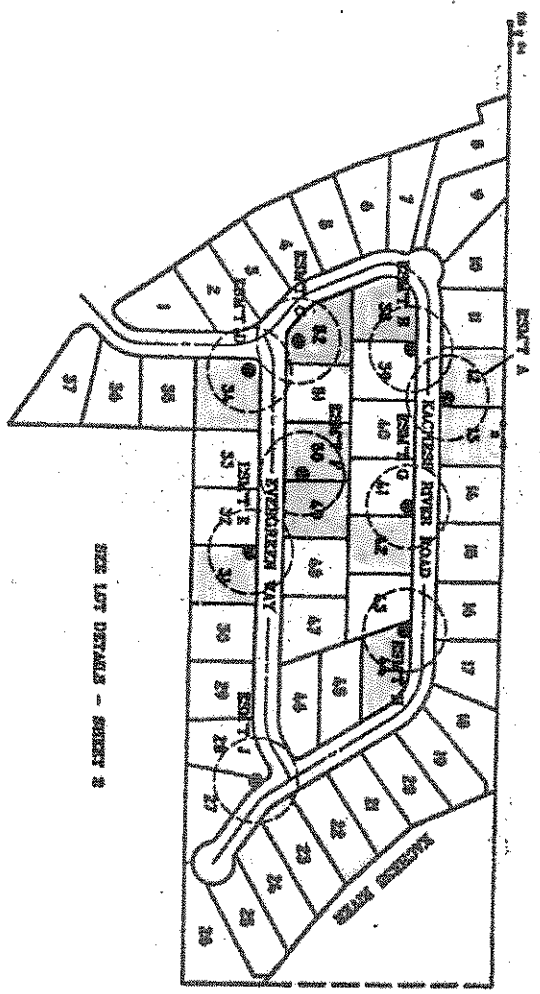
**Legend**

- Wells
- Lot Lines
- Parcel Annotation
- Rights of Way
- Row
- Canal
- Other
- Parcels
- Buffer Parcels
- Snowload

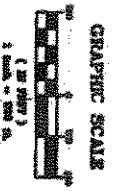


# LAKE EASTON ESTATES - WELL EASEMENTS

## SEC. 3, T. 20 N., R. 13 E., W.M.



SITE LOT DETAILS - SHEET 2



- 59075
- NOTES**
1. THIS SURVEY WAS PERFORMED USING A SURVEYING STATION, STATIONED AT THE CORNER OF THE SECTION AND PROPERTY CORNERS SHOWN HEREON WERE LOCATED, STAKED AND CHECKED FROM A CLOSED WALK THROUGH IN EXCESS OF FIVE (5) HUNDRED FEET FROM THE SECTION CORNERS.
  2. THIS SURVEY MAY NOT SHOW ALL EASEMENTS WHICH MAY PERTAIN TO THIS PROPERTY.
  3. BASES OF RECORDS - MAP OF LAKE EASTON ESTATES.
  4. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOCATIONS OF THE CORNER BILLS AND TO SHOW PROTECTIVE BORDERS FOR EACH WELL WHEN THE MAP OF LAKE EASTON ESTATES, AS FILED IN BOOK 8 OF PLAT, PAGES 22-26, RECORDS OF MICHIGAN COUNTY, WASHINGTON, WERE LOCATED. SURVEYING STAKE LOCATIONS ILLUSTRATED ON THE APPROVED PLAT.
  5. EASEMENTS ON LOT 7 AND LOT 19 AS SHOWN ON THE APPROVED PLAT HAVE BEEN REDETERMINED.
  6. EASEMENTS A, B, H AND J SHOWN AS PERVIOUSLY SHOWN ON THE SUBJECT PLAT OF RECORD.
  7. EASEMENTS K, C, E, F AND G HAVE BEEN ADDED.

**EASEMENT A**  
 EASEMENT A AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 14, 15, 16 AND 17, 18 AND 19, 20 AND 21 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT B**  
 EASEMENT B AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 11, 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT C**  
 EASEMENT C AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 11, 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT D**  
 EASEMENT D AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 11, 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT E**  
 EASEMENT E AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT F**  
 EASEMENT F AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT G**  
 EASEMENT G AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT H**  
 EASEMENT H AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT I**  
 EASEMENT I AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

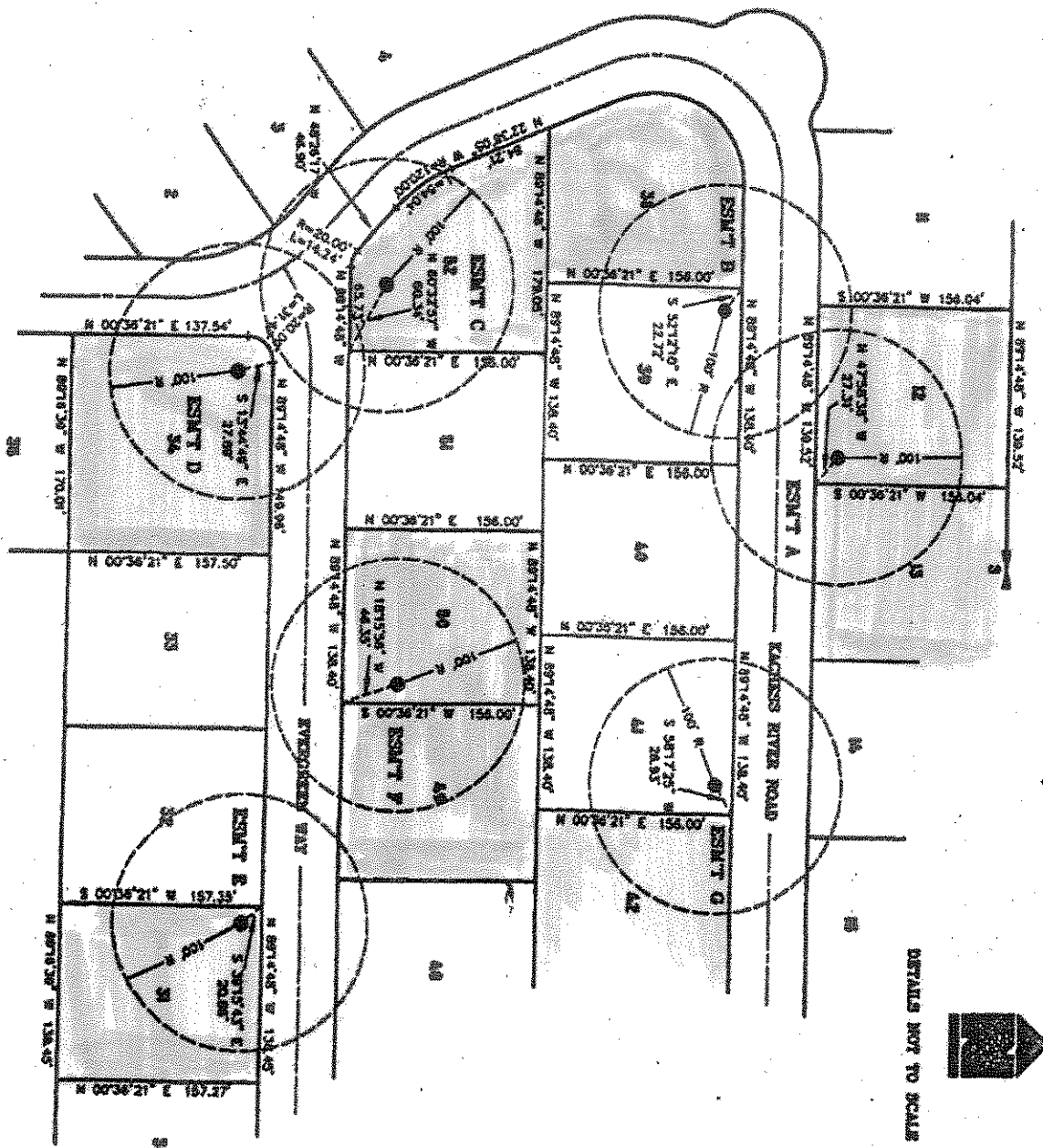
**EASEMENT J**  
 EASEMENT J AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**EASEMENT K**  
 EASEMENT K AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

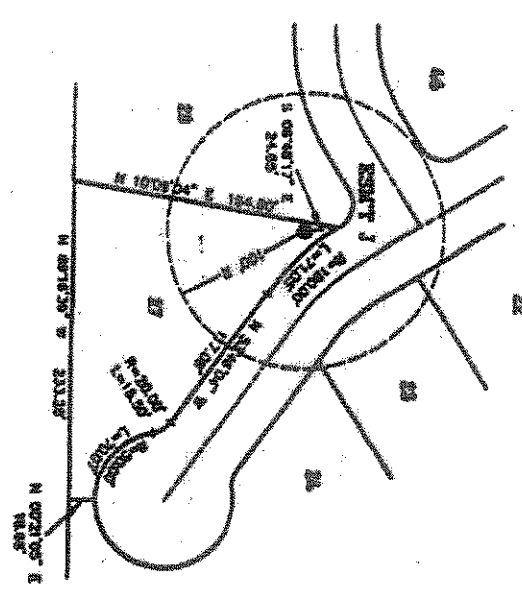
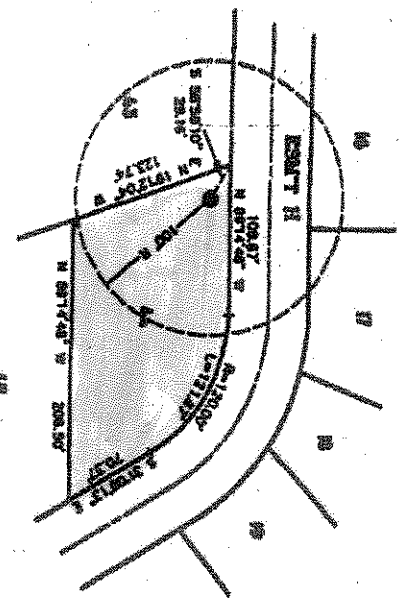
**EASEMENT L**  
 EASEMENT L AS DELINEATED ON THAT CERTAIN SURVEY RECORDED APRIL 4, 1995 IN BOOK 20 OF SURVEYS AT PAGE 242-243 UNDER AUDITOR'S FILE NO. 342422 RECORDS OF MICHIGAN COUNTY, WASHINGTON, BEING A CROSS NORTH, RANGE 13 EAST, IN THE COUNTY OF MICHIGAN, STATE OF WASHINGTON, AFFECTING LOTS 2, 3, 4, 5 AND 6, 7 AND 8, 9 AND 10, 11 AND 12, 13 AND 14, 15 AND 16, 17 AND 18, 19 AND 20, 21 AND 22, 23 AND 24 PLAIN, PAGES 22-24, RECORDS OF SAID COUNTY.

**CRUSE & NELSON**  
 PROFESSIONAL LAND SURVEYORS  
 517 West Fourth Street P.O. Box 800  
 Ellensburg, WA 98926 (509) 525-4747  
**LAKE EASTON ESTATES**

LAKE EASTON ESTATES - WELL EASEMENTS  
 SEC. 3, T. 20 N., R. 13 E., W.M.



DETAILS NOT TO SCALE



AUDITOR'S CERTIFICATE

Read the record with this copy of plat.  
 Made at 2:17 P.M. on this 30th day of August  
 1967. J.S.E. at the request of Cruse & Nelson.

RENEALY M. ALDRIDGE JR., R. *Shelley*  
 Notary Public  
 BRITISH COLUMBIA COUNTY

**CRUSE & NELSON**  
 PROFESSIONAL LAND SURVEYORS  
 217 East Fourth Street P.O. Box 8520  
 Charlottesville, VA 22902 (505) 963-4747  
 LAKE EASTON ESTATES



## *JoDee Marlatt*

26825 210<sup>th</sup> Ave SE  
Covington, WA 98042  
[jodeemarlatt@hotmail.com](mailto:jodeemarlatt@hotmail.com)

Cell: 206-423-7109  
Home: 425-432-1757

---

July 1, 2012

To Whom It May Concern,

My name is JoDee Marlatt and I own lot 41 in Lake Easton Estates. I purchased the property in June of 2001 with the plan of building our retirement home there.

My purpose in writing this letter is to support the Brewers in their appeal for their variance request which was denied. Denial of this appeal would have extreme adverse affects to our property, ultimately making it detrimental to our retirement.

The rezoning regulations for our lot have decreased the buildable area considerably. The property was rezoned from Forest and Range to Rural Residential. As I understand it this was based on five acre lots. This is a huge change for a lot that is only ½ acre like ours and really restricts the buildable area.

The biggest issue for us is what appears to be Kittitas County's sudden and arbitrary enforcement of the sanitary protection areas that would prohibit building within 100 feet of the well even though our CC&Rs and Water User Declaration allow building, as does the State of Washington. It just so happens that one of the well houses is on our property. With the new set back zoning and the well restrictions it makes it impossible for us to build on the property and in essence it would be taken through eminent domain. This would be a complete loss to our retirement.

I am respectfully asking for you to grant the appeal for the variance. Please feel free to call me if you have any questions.

Best Regards,

JoDee Marlatt

BREWER NOTICE OF APPEAL - VARIANCE DECISION (VA-12-00002)

**Dan Valoff**

---

**From:** James Rivard  
**Sent:** Wednesday, June 06, 2012 4:58 PM  
**To:** Dan Valoff  
**Cc:** Joe Gilbert; Holly Duncan  
**Subject:** RE: Comments re Brewer Variance Application (VA-12-00002)

Hi Dan,

To the best of my knowledge and ability to interpret the attached documents and the documents included within the link, I have to recommend that the variance be denied. It appears that the proposed shop is within the 100 foot sanitary circle. Community water systems such as Group A and B systems typically have a restrictive covenant that does not allow for the construction of structures within the sanitary circle to protect public health and the water supply from potential contaminants.

Perhaps the applicant can provide a scaled drawing showing the proposed shop is not within the 100 foot sanitary circle or move the proposed shop back or to another location on the lot that is outside of the sanitary circle?

Should you have any questions feel free to contact me or staff.

**James Rivard**

Environmental Health Supervisor  
Kititas County Public Health Department  
507 N. Nahum St., Suite 102  
Ellensburg, WA 98926  
(509) 962-7005

CONFIDENTIALITY NOTICE: This e-mail message and any attachments are for the sole use of the intended recipient(s) and may contain proprietary, confidential or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited and may be a violation of law. The enclosed information may or may not be accurate and the recipient of such information understands this fact in its entirety. If you are not the intended recipient or a person responsible for delivering this message to an intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** Dan Valoff  
**Sent:** Wednesday, June 06, 2012 1:45 PM  
**To:** James Rivard  
**Cc:** Joe Gilbert  
**Subject:** FW: Comments re Brewer Variance Application (VA-12-00002)

James,

Can you evaluate these comments regarding the community well and the Brewer setback variance request (VA-12-00002)? Will the new structure impact the community well?

T:\CDS\Projects\Variances\VA 2012\VA-12-00002 Brewer

575787

WATER USER'S DECLARATION

KITTITAS COUNTY AUDITOR  
RECEIVED  
95 JUN 27 PM 3:26

COMES NOW THE UNDERSIGNED who hereby makes this Declaration with respect to a well and water system.

1. Property Affected. The well, pump house and waterworks is located upon the following described real property:

Lot 41 of Lake Easton Estates, recorded under Kittitas County Auditor's File No. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington.

2. Property Benefited. The following-described property shall be entitled to utilize in common the water from the water system described herein:

Lots 16, 17, 18, 41, 42 and 43 of Lake Easton Estates, recorded under Kittitas County Auditor's File No. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington.



3. Ownership. There is appurtenant to each parcel above described an undivided one-sixth interest in and to the use of the well and water system now constructed or to be constructed. Each parcel above described shall be entitled to receive an equal supply of water for one residential dwelling for domestic purposes.

4. Water System Construction. Each parcel designated above shall share equally in the cost of well site approval, well construction, design of water system for approval of the health officer, and construction and/or installation of all reasonably necessary waterworks equipment, the pump house, water distribution pipes, and initial water quality tests.

Appurtenant to each parcel above described shall be the obligation to participate in the maintenance and operational costs of the well and water system described. The expense of water sampling as required by the State of Washington and Kittitas County shall be shared equally. A reserve account shall be established and maintained at a mutually agreed upon banking institution. Each property owner shall be entitled to receive an annual statement from said banking institution regarding the status of the reserve account. The monetary funds in the reserve account shall be utilized for the sole purpose of submitting water samples for quality analysis and maintaining, repairing, or replacing the well and common waterworks equipment or appurtenances thereto.

5. Easement for Well Site and Pump House. An easement is hereby declared for the purpose of maintaining or repairing the well and appurtenances. Said easement shall also allow the installation of a well house, pumps, water storage reservoir, pressure tanks, and other equipment necessary for the operation of the water system.

6. Water Line Easement. There is hereby established and declared an easement for the use and purpose of conveying water from the well to each of the other parcels hereinabove described. Said easement shall be 10 (ten) feet in width and shall extend from the well site to each of the other parcels hereinabove described in the most reasonable direct route. No permanent improvements shall be constructed upon the water line easements except as needed for the operation of the well and water system. Any subsequent entry onto the well site property for purposes of excavation or to repair any underground water line shall require restoration of any disturbed areas.

7. Maintenance and Repair. All pipelines in the water system shall be maintained so that there will be no leakage or seepage or other defects which may cause contamination of the water or injury or damage to persons or property. Pipe materials used in repair shall meet the approval of the health officer. The cost of providing power, chemicals, repairs and replacement of any of

the common physical facilities including common pipeline shall be a fractional amount. The numerator of such fraction shall be the water used by each particular parcel and the denominator of said fraction shall be total amount of water used by all parcels subject to this Declaration. There shall be installed at the central distribution facility a water meter on each separate water line. Periodically, but not less frequently than monthly water meter readings shall be utilized to determine the fractions hereinabove set forth. The costs of maintenance based upon the fractions derived above shall be adjusted on an annual basis on June 30th of each year. Each parcel served by this agreement shall be responsible for the maintenance, repair, and replacement of meter and pipes supplying water from the common water distribution piping to its own particular dwelling and property. Water pipelines shall not be installed within ten (10) feet of a septic tank or within ten (10) feet of sewage disposal drainfield lines.

8. Prohibited Practices. No person will construct, maintain, or suffer to be constructed or maintained upon the property above described and within 100 feet of the well herein described, so long as the same is operated to furnish water for public consumption, any of the following: Septic tanks and drainfields, sewer lines, underground storage tanks, County or State roads, railroad tracks, vehicles, structures, barns, feeding stations, grazing animals, enclosures for maintaining fowl or

animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind. The parties will not cross-connect any portion or segment of the water system with any other water source without proper written approval of the Kittitas County Department of Public Health and/or other appropriate governmental agency.

9. Water System. The water system and water system bank account shall be managed by such of the parties as the parties who own the property hereinabove described mutually agree upon. The system manager shall receive no compensation for system management. The system manager shall have the authority to incur obligations for emergency repairs and routine operations. System improvements and scheduled repairs or emergency repairs incorporating system improvements or upgrading shall be subject to concurrence by a majority of the property owners. The system manager shall provide his or her name, address, and telephone number to the Kittitas County health officer and shall serve as a contact person to the health officer. The system manager shall organize and maintain the water system records and notify the health officers and all parties, service connections, and lots that are included in this declaration of the water quality tests that are required by WAC 241-291, and Kittitas County rules and regulations.

10. Restrictions on Furnishing Water. No other property may be served by water from the well and water system without prior consent of all properties subject to this declaration and written approval from the Kittitas County Department of Public Health.

11. Breach of Agreement, Unpaid Obligations. Any amounts due the system shall be a lien upon the obligor's respective property, foreclosable in the nature of a real estate mortgage. Any breach or violation of this Agreement may be enjoined, or performance, outstanding obligations or damages recovered from any party by action maintained by both other parties.

Any dispute between the parties shall be resolved by binding arbitration in the manner provided for binding arbitration for Superior Court matters. The prevailing party or parties in arbitration or in litigation shall be entitled to an award of costs of any action in addition to reasonable attorney's fees. The venue of any proceeding or action to enforce the terms of this Agreement shall be in the Superior Court of Kittitas County, Washington.

A defaulting party failing to abide by the terms of this Agreement may have service disconnected upon ten (10) days' written notice mailed to his/her last known address and posted upon the premises in a conspicuous manner.

12. Heirs, Successors, and Assigns. These covenants and agreements shall run with the land and shall be binding upon all

parties having or acquiring any right, title or interest in the land described herein.

IN WITNESS WHEREOF, the parties have signed this document on the date first above set forth.

BEACONSFIELD ASSOCIATES

By Barton H. Clennon  
Managing Partner

STATE OF WASHINGTON )  
                                  ) ss.  
County of Kittitas )

I certify that I know or have satisfactory evidence that BARTON H. CLENNON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the managing partner of BEACONSFIELD ASSOCIATES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 19, 1994.

(Notary Seal) 

STATE OF WASHINGTON
CHARLES B. SHERIDAN
NOTARY PUBLIC
COMMISSION EXPIRES
OCT. 17, 1995

Charles B. Sheridan  
Notary Public in and for the State of Washington.  
My appointment expires: 10-17-95

578784

KITTITAS COUNTY AUDITOR  
FILED REQUEST OF:  
WATER USER'S DECLARATION *Cone-CE*  
95 JAN 27 PM 3:26

13-

COMES NOW THE UNDERSIGNED who hereby makes this Declaration with respect to a well and water system.

1. Property Affected. The well, pump house and waterworks is located upon the following described real property:

Lot 31 of Lake Easton Estates, recorded under Kittitas County Auditor's File No. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington. PP

2. Property Benefited. The following-described property shall be entitled to utilize in common the water from the water system described herein:

Lots 28, 29, 30, 31, 32 and 33 of Lake Easton Estates, recorded under Kittitas County Auditor's File No. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington.

VOL 362 PAGE 1349

3. Ownership. There is appurtenant to each parcel above described an undivided one-sixth interest in and to the use of the well and water system now constructed or to be constructed. Each parcel above described shall be entitled to receive an equal supply of water for one residential dwelling for domestic purposes.

4. Water System Construction. Each parcel designated above shall share equally in the cost of well site approval, well construction, design of water system for approval of the health officer, and construction and/or installation of all reasonably necessary waterworks equipment, the pump house, water distribution pipes, and initial water quality tests.

Appurtenant to each parcel above described shall be the obligation to participate in the maintenance and operational costs of the well and water system described. The expense of water sampling as required by the State of Washington and Kittitas County shall be shared equally. A reserve account shall be established and maintained at a mutually agreed upon banking institution. Each property owner shall be entitled to receive an annual statement from said banking institution regarding the status of the reserve account. The monetary funds in the reserve account shall be utilized for the sole purpose of submitting water samples for quality analysis and maintaining, repairing, or replacing the well and common waterworks equipment or appurtenances thereto.



5. Easement for Well Site and Pump House. An easement is hereby declared for the purpose of maintaining or repairing the well and appurtenances. Said easement shall also allow the installation of a well house, pumps, water storage reservoir, pressure tanks, and other equipment necessary for the operation of the water system.

6. Water Line Easement. There is hereby established and declared an easement for the use and purpose of conveying water from the well to each of the other parcels hereinabove described. Said easement shall be 10 (ten) feet in width and shall extend from the well site to each of the other parcels hereinabove described in the most reasonable direct route. No permanent improvements shall be constructed upon the water line easements except as needed for the operation of the well and water system. Any subsequent entry onto the well site property for purposes of excavation or to repair any underground water line shall require restoration of any disturbed areas.

7. Maintenance and Repair. All pipelines in the water system shall be maintained so that there will be no leakage or seepage or other defects which may cause contamination of the water or injury or damage to persons or property. Pipe materials used in repair shall meet the approval of the health officer. The cost of providing power, chemicals, repairs and replacement of any of

the common physical facilities including common pipeline shall be a fractional amount. The numerator of such fraction shall be the water used by each particular parcel and the denominator of said fraction shall be total amount of water used by all parcels subject to this Declaration. There shall be installed at the central distribution facility a water meter on each separate water line. Periodically, but not less frequently than monthly water meter readings shall be utilized to determine the fractions hereinabove set forth. The costs of maintenance based upon the fractions derived above shall be adjusted on an annual basis on June 30th of each year. Each parcel served by this agreement shall be responsible for the maintenance, repair, and replacement of meter and pipes supplying water from the common water distribution piping to its own particular dwelling and property. Water pipelines shall not be installed within ten (10) feet of a septic tank or within ten (10) feet of sewage disposal drainfield lines.

8. Prohibited Practices. No person will construct, maintain, or suffer to be constructed or maintained upon the property above described and within 100 feet of the well herein described, so long as the same is operated to furnish water for public consumption, any of the following: Septic tanks and drainfields, sewer lines, underground storage tanks, County or State roads, railroad tracks, vehicles, structures, barns, feeding stations, grazing animals, enclosures for maintaining fowl or

animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind. The parties will not cross-connect any portion or segment of the water system with any other water source without proper written approval of the Kittitas County Department of Public Health and/or other appropriate governmental agency.

9. Water System. The water system and water system bank account shall be managed by such of the parties as the parties who own the property hereinabove described mutually agree upon. The system manager shall receive no compensation for system management. The system manager shall have the authority to incur obligations for emergency repairs and routine operations. System improvements and scheduled repairs or emergency repairs incorporating system improvements or upgrading shall be subject to concurrence by a majority of the property owners. The system manager shall provide his or her name, address, and telephone number to the Kittitas County health officer and shall serve as a contact person to the health officer. The system manager shall organize and maintain the water system records and notify the health officers and all parties, service connections, and lots that are included in this declaration of the water quality tests that are required by WAC 241-291, and Kittitas County rules and regulations.

10. **Restrictions on Furnishing Water.** No other property may be served by water from the well and water system without prior consent of all properties subject to this declaration and written approval from the Kittitas County Department of Public Health.


11. **Breach of Agreement, Unpaid Obligations.** Any amounts due the system shall be a lien upon the obligor's respective property, foreclosable in the nature of a real estate mortgage. Any breach or violation of this Agreement may be enjoined, or performance, outstanding obligations or damages recovered from any party by action maintained by both other parties.

Any dispute between the parties shall be resolved by binding arbitration in the manner provided for binding arbitration for Superior Court matters. The prevailing party or parties in arbitration or in litigation shall be entitled to an award of costs of any action in addition to reasonable attorney's fees. The venue of any proceeding or action to enforce the terms of this Agreement shall be in the Superior Court of Kittitas County, Washington.

A defaulting party failing to abide by the terms of this Agreement may have service disconnected upon ten (10) days' written notice mailed to his/her last known address and posted upon the premises in a conspicuous manner.

12. **Heirs, Successors, and Assigns.** These covenants and agreements shall run with the land and shall be binding upon all



TREASURER'S USE ONLY	RECORDER'S USE ONLY
	 200103270017 Page: 1 of 6 03/27/2001 02:34P DCL 13.00 Kittitas Co Auditor ELI SHOVAL

Return To: Northwest Title  
108 N. Main St. Ellensburg WA 98926

**Kittitas County Auditor/Recorder's Indexing Form**

**Please Print Or Type All Information**

A. Document Titles (or transactions contained therein):  
 1 Water User Declaration  
 2 \_\_\_\_\_

B. Grantor (last name, first name, middle initial):  
 1 ELI SHOVAL  
 2 \_\_\_\_\_  
 Additional grantors on page \_\_\_ of document.

C. Grantee (last name, first name, middle initial):  
 1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 Additional grantees on page \_\_\_ of document.

D. Legal description (lot, block, plat or section, township, range):  
Lake Easton Estates  
 Additional legal description on page \_\_\_ of document.

E. Assessor's property tax parcel/account number(s):  
 \_\_\_\_\_

F. Reference numbers of documents assigned or released:  
 \_\_\_\_\_  
 Additional references on page \_\_\_ of document.

The auditor or recording officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.



## WATER USER'S DECLARATION

COMES NOW THE UNDERSIGNED who hereby makes this Declaration with respect to a well and water system.

1. **Property Affected.** The well, pump house and waterworks is located upon the following described real property:

Lot 31 of Lake Easton Estates, recorded under Kittitas County Auditor's File No. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington.

2. **Property Benefited.** The following- described property shall be entitled to utilize in common the water from the water system described herein:

Lots 28, 29, 30, 31, 32, and 33 of Lake Easton Estates recorded under Kittitas County Auditor's File no. 526505, Volume 8, Page 22 through 26 of Plats, records of Kittitas County, State of Washington

3. **Ownership.** There is appurtenant to each parcel above described an undivided one-sixth interest in and to the use of the well and water system now constructed or to be constructed. Each parcel above described shall be entitled to receive an equal supply of water for one residential dwelling for domestic purposes.

4. **Water System Construction.**

Appurtenant to each parcel above described shall be the obligation to participate in the maintenance and operational costs of the well and water system described. The expense of water sampling as required by the State of Washington and Kittitas County



shall be shared equally. A reserve account shall be established and maintained at a mutually agreed upon banking institution. Each property owner shall be entitled to receive an annual statement from said banking institution regarding the status of the reserve account. The monetary Funds in the reserve account shall be utilized for the sole purpose of submitting water samples for quality analysis and maintaining, repairing, or replacing the well and common waterworks equipment or appurtenances thereto.

5. **Easement for Well Site and Pump House.** An easement is hereby declared for the purpose of maintaining or repairing the well and appurtenances. Said easement shall allow the installation of a well house, pumps, water storage reservoir, pressure tanks, and other equipment necessary for the operation of the water system.

6. **Water Line Easement.** There is hereby established and declared an easement for the use and purpose of conveying water from the well to each of the other parcel herein above described. Said easement shall be 10 (ten) feet in width and shall extend from the well site to each of the other parcels herein above described in the most reasonable direct route. No permanent improvements shall be constructed upon the water line easements except as needed for the operation of the well and water system. Any subsequent entry onto the well site property for purposes of excavation or to repair any underground water line shall require restoration of any disturbed areas.

7. **Maintenance and Repair.** All pipelines in the water system shall be maintained so that there will be no leakage or seepage or other defects which may cause contamination of the water or injury or damage to persons or property. Pipe material used in repair shall meet the approval of the Health Officer. The cost of providing power,





chemicals, repairs and replacements of any of the common facilities including common pipeline shall be a fractional amount as of the amount of persons using the water system. Each parcel served by this agreement shall be responsible for the maintenance, replacement, and repair of pipes supplying water from the common water distribution system to its own particular dwelling and property. Water pipeline shall not be installed within 10 feet of a septic tank or within 10 feet of sewage disposal drainfield lines.

8. **Prohibited Practices.** No person will construct, maintain, or suffer to be constructed or maintained upon the property above described and within 100 feet of the well herein described, so long as the same is operated to furnish water for public consumption, any of the following: Septic tanks and drainfields, underground storage tanks, County of State Roads, railroad tracks, vehicles, structures, barns, feeding stations, grazing animals, enclosures for maintaining fowl or animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind. The parties will not cross-connect any portion or segment of the water system with any other source without proper written approval of the Kittitas County Department of Public Health and/or other appropriate governmental agency.

9. **Water systems.** The water system and water system bank account shall be managed by Lake Easton Estates Homeowner Association and the parties who own the property hereinabove described mutually agree upon. The system manager shall received no compensation for system management. The system manager shall have the authority to incur obligations for emergency repairs and routine operations. System improvements and scheduled repairs or emergency repairs incorporating system improvements or upgrading shall be subject to concurrence by a majority of the property owners. The system manager shall provide his or her name, address, and telephone number to the Kittitas County health officer and shall serve as a contact person to the health officer.



200103270017

Page: 5 of 6  
03/27/2001 02:34P  
DCL 13.08

Kittitas Co Auditor ELI SHOVAL

The system manager shall organize and maintain the water system records and notify the health officers and all parties, service connections, and lots that are included in this declaration of the water quality test that are required by WAC 241-291, and Kittitas County rules and regulations.

**10. Restrictions on Furnishing Water.** No other property may be served by water from the well and water system without prior consent of all properties subject to this declaration and written approval from the Kittitas County Department of Public Health.

**11. Breach of Agreement, Unpaid Obligations.** Any amounts due the system shall be a lien upon the obligor's respective property, foreclosable in the nature of a real estate mortgage. Any breach or violation of this Agreement may be enjoined, or performance, outstanding obligations or damages recovered from any party by action maintained by both other parties.

Any dispute between the parties shall be resolved by binding arbitration in the manner provided for binding arbitration for Superior Court matters. The prevailing party of parties in arbitration or in litigation shall be entitled to and award of costs of any action in addition to reasonable attorney's fees. The venue of any proceeding of action to enforce the terms of the Agreement shall be in the Superior Court of Kittitas County, Washington.

A defaulting party failing to abide by the terms of this agreement may have service disconnected upon ten days' written notice mailed to his/her last known address and posted upon the premises in a conspicuous manner.



Kittitas Co Auditor ELI SHOVAL

12. Heirs, Successors, and Assigns. These covenants and agreements shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the land described herein.

IN WITNESS WHEREOF, The parties have signed this document on the date first above set forth.

By Eli Shoval

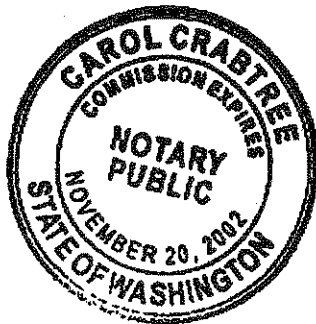
STATE OF WASHINGTON )

)

County of Kittitas )

I certify that I know of have satisfactory evidence that ELI SHOVAL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the free and voluntary act of such party for the uses and purposed mentioned in the instrument.

DATED: 3/27/01



Carol Crabtree  
Notary Public in and for the State of  
Washington.  
My appointment expires: 11/20/02

527307

7-5

*Cruse & Nelson*  
FEB 23 AM 11:23

LAKE EASTON ESTATES RESTRICTIVE COVENANTS

1. Removal of vegetation from within 100 feet of the ordinary high water line of the Kachess River shall be limited to selective cut of trees that are either dead or diseased, or trees that present a significant safety hazard to life or property. At a maximum, vegetation maintenance shall be limited to the removal of no more than thirty percent of the merchantable size trees in any ten year period. This covenant shall not pertain to underbrush and trees less than 3" in diameter, more than 15' from the ordinary high water line.

2. Construction of roadways and/or structures within 100 feet of the ordinary high water line of the Kachess River is not permitted.

3. No single-wide mobile homes are permitted within this subdivision. Double-wide mobile homes may be placed within this subdivision but only at the permission of the developer or his authorized representative.

DATED this 6th day of Feb., 1990.

*Hadley D. Hackney*  
Hadley D. Hackney

STATE OF WASHINGTON  
County of Spoкан S.S.

On this day personally appeared before me HADLEY D. HACKNEY known to me to be the individual described in and who executed the within and foregoing instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 6th day of February, 1990.

*Hadley D. Hackney*  
NOTARY PUBLIC in and for the State of Washington, residing at Spoкан

*Ret. name*  
*PO Box 959*  
*Elk 98726*

552887

KITTITAS COUNTY AUDITOR  
FILED REQUEST OF:

1992 SEP 21 PM 2:01

*Randall & Danskin, P.S.*

*No. 02*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
LAKE EASTON ESTATES  
Amended September 15, 1992

THIS AMENDED DECLARATION is made this 15th day of September, 1992, by REFLECTION LAKE, INC., hereinafter referred to as "Declarant", pursuant to Article 7.3 of the Amended Declaration recorded under auditor's #547464, and supersedes said Amended Declaration and the document recorded under auditor's #535051.

WITNESSETH:

WHEREAS, Declarant is the owner of more than 50% of the lots in Lake Easton Estates, a residential subdivisions in Kittitas County, State of Washington, which is more particularly described as follows:

Plat of Lake Easton Estates, as recorded in Volume 8 of Plats, pages 22 through 26, records of Kittitas County, State of Washington.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to this Amended Declaration, including easements, which are for the purpose of protecting the value and desirability of the lots in Lake Easton Estates, and which shall run with the land and be binding on all parties having any right, title or interest in the subject property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Declarant further declares that this Amended Declaration shall supersede any and all covenants, conditions and restrictions heretofore made with respect to the above-described property, except that, as to the Declaration of Covenants recorded under Auditor's No. 535051, this is simply a restatement.

*Ret:*

1 ARTICLE 1  
2 DEFINITIONS

3 1.1 "Association" shall mean the Lake Easton Estates Homeowners Association,  
4 whether it is a Washington non-profit corporation, its successors and assigns.

5 1.2 "Owner" shall mean the record owners, whether one or more persons or  
6 entities, of fee simple title to any lot which is a part of the properties, including contract  
7 purchasers, but not including those having only a security interest to secure the performance  
8 of an obligation.

9 1.3 "Properties" shall mean that certain real property hereinabove described, and  
10 such additions thereto as may hereafter be brought under this Amended Declaration.

11 1.4 "Lot" shall mean any plot of land shown upon any recorded subdivision of  
12 the property.

13 1.5 "Declarant" shall mean Reflection Lake, Inc., a Washington corporation, its  
14 successors and assigns.

15 ARTICLE 2  
16 MEMBERSHIP AND VOTING

17 2.1 Every Owner shall be a member of the Association, provided however that no  
18 more than one (1) vote shall be cast per Lot, regardless of the number of Owners thereof.  
19 Membership shall be appurtenant to, and may not be separate from, ownership of a Lot. A  
20 member, including the Declarant, who owns more than one Lot, is a member as to each Lot  
21 that he owns. Thus, one person may be more than one member for all purposes of this  
22 Amended Declaration, including establishing a quorum and voting.

23 2.2 The membership of the Declarant may, in the discretion of the Declarant, be  
24 surrendered to the Association.

25 ARTICLE 3  
26 COVENANTS FOR MAINTENANCE ASSESSMENT

27 3.1 Creation of the Lien and Personal Obligation of Assessments. Each  
28 Owner, by acceptance of a deed to a Lot, or by contracting to purchase a Lot, whether or  
29 not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay  
30

1 to the Association: (a) annual assessments, and (b) special assessments for capital  
2 improvements, all such assessments to be established and collected as hereinafter provided.  
3 The annual and special assessments, together with interest, costs and reasonable attorney  
4 fees, shall be a charge on the Lot and shall be a continuing lien, in the nature of a mortgage  
5 upon the Lot, against which such assessment is made. Each such assessment, together with  
6 interest, costs and reasonable attorney fees, shall also be the personal obligation of the  
7 person who was the Owner of such Lot at the time when the assessment was made.  
8

9 The Declarant shall not be obligated to pay any assessments or charges,  
10 whether annual or special, and no lien for any such assessments shall attach to Lots while  
11 they are owned by the Declarant prior to their initial sale to a third party.  
12

13 3.2 Purpose of Assessments. The assessments levied by the Association shall be  
14 used exclusively to promote the recreation, health, safety and welfare of the Owners, and to  
15 pay costs associated with any signage, landscaping, lighting and water thereof.

16 3.3 Annual Assessments. The annual assessments shall be determined by the  
17 Homeowners Association.

18 3.4 Special Assessments for Capital Improvements. In addition to the annual  
19 assessments, the Association may levy, in any year, a special assessment applicable to that  
20 year only, for the purpose of defraying, in whole or in part, the cost of any construction,  
21 reconstruction, repair or replacement of any capital improvement for the benefit of the  
22 Properties generally, including fixtures and personal property related thereto, provided that  
23 any such assessment must have the assent of two-thirds (2/3) of the votes of members at a  
24 meeting duly called for this purpose.  
25

26 3.5 Notice and Quorum for Any Action Authorized Under Paragraphs 3.3  
27 and 3.4.  
28

29 3.5.1 Written notice of any meeting called for the purpose of taking any  
30 action authorized under paragraphs 3.3 or 3.4 shall be sent to all members not less  
31 than thirty (30) days, nor more than sixty (60) days, in advance of the meeting.  
32  
33  
34  
35  
36

1 3.5.2 Twenty (20) members present in person or by written proxy filed with  
2 the Secretary at or before the meeting, shall constitute a quorum for the transaction  
3 of any business appropriate to such members' meeting.

4 3.6 Date of Commencement of Annual Assessment; Due Dates. The annual  
5 assessments provided for herein shall commence as to all Lots on the first day of the  
6 calendar year as herein provided. The Board of Trustees of the Association shall fix the  
7 amount of the annual assessment against each Lot at least thirty (30) days in advance of  
8 each annual assessment period. Written notice of the annual assessment shall be sent to  
9 every Owner subject thereto. The due dates shall be established by the Board of Trustees.  
10 The Association shall, upon request, and for a reasonable charge, furnish a certificate signed  
11 by an officer of the Association setting forth the annual amounts of the assessments against  
12 any Lot and whether or not the assessments have been paid. A certificate of the Association  
13 as to the status of assessments on a Lot is binding upon the Association as of the date of its  
14 issuance.  
15  
16

17 3.7 Effect of Nonpayment of Assessments; Remedies of the Association. Any  
18 assessments not paid within thirty (30) days after the due date shall bear interest from the  
19 due date at a rate of twelve per cent (12%) per annum. The Association may bring an  
20 action at law against the Owner personally obligated to pay the same, or foreclose the lien  
21 against the Lot. No Owner may waive, or otherwise avoid, liability from the assessments  
22 provided for herein by abandonment or conveyance of his Lot.  
23

24 3.8 Subordination of the Lien of Mortgages. The lien of the assessments  
25 provided for herein shall be subordinate to the lien of any first mortgage. No sale or  
26 transfer of any Lot shall affect the lien. No sale or transfer shall relieve such Lot, or its  
27 Owner at the time that the assessment first became due, from liability for any assessments.  
28

29 ARTICLE 4

30 GENERAL RESTRICTIVE COVENANTS

31 4.1 Land Use and Building Type. No Lot shall be used other than for  
32 residential purposes. No commercial activity shall be permitted within the Properties. No  
33 building shall be erected, altered, placed or permitted to remain on any Lot other than the  
34  
35  
36



1 one single-family dwelling. This restriction shall not be construed as a protection against  
2 view impairment. No Lot shall be subdivided except by permission of the Association.

3 4.2 Notwithstanding the provisions of paragraph 5.1, the Declarant, or its  
4 successors, shall have the right to maintain a real estate sales office within the Property.  
5 The sales office may be housed in a trailer or in a building constructed to be used ultimately  
6 as a single-family residence. During the construction period, Declarant shall have the right  
7 to maintain and store such trailers, shops or sheds on the Property, and materials and  
8 equipment incident to its development, as it deems necessary.

9  
10 4.3 **Building Location.** The location of all buildings and structures on any Lot  
11 shall conform to the current setback requirements of the Kittitas County Building and/or  
12 Zoning Codes.

13  
14 4.4 Lot Owners shall comply with all requirements of the Kittitas County  
15 Building and/or Zoning Codes, and/or ordinances or regulations in effect from time to time.

16 4.5 All residential structures shall have fire resistant roofs.

17 4.6 Any residential structure built or placed on any Lot shall be completed as to  
18 external appearance, including painting, within six (6) months from the time it is started.

19 4.7 An Owner may use a motor home or travel trailer on a Lot, but only in strict  
20 compliance with Kittitas County regulations.

21 4.8 Manufactured homes or permanent double-wide mobile or modular homes  
22 meeting all requirements of the county building code, including snow load requirements,  
23 may be placed on lots but only on a poured concrete foundation. No shed roofs over such  
24 manufactured homes or double-wides are allowed.

25 4.9 The only buildings allowed on any lot will be a single family dwelling and  
26 one outbuilding, such as a garage or storage building. Except during construction which  
27 shall not exceed six months, no temporary structures of any character are allowed.

28 4.10 No external radio antennas, free standing antenna towers or satellite reflection  
29 disks or dishes, or similar equipment are allowed.

30 4.11 No Lot shall be used as a dumping ground for rubbish, trash or garbage.  
31  
32  
33  
34  
35  
36

1 4.12 No animals, livestock or poultry of any kind shall be raised, bred or kept on  
2 any Lot, except that not more than two dogs, cats or similar household pets may be kept,  
3 provided they are not kept, bred or maintained for any commercial purpose, and horses may  
4 be kept on a Lot on a temporary basis, being not more than seven (7) days in any thirty (30)  
5 day period. All household pets shall remain under Owners' control at all times and the  
6 Owner of a Lot shall be responsible for them.  
7

8 4.13 No offensive activities shall be carried on upon any Lot, nor shall anything be  
9 done thereon which would constitute an a nuisance. Snowmobiles, motorcycles and bicycles  
10 shall be used only in accordance with state laws and county ordinances pertaining to county  
11 roads. Roads within the Property are to be used for ingress and egress only and not for  
12 pleasure riding. No appliances or inoperative vehicles shall be placed or stored upon any  
13 Lot, except inside an authorized building, or on any road.  
14

15 4.14 Landscaping. Front yard landscaping shall be completed within 120 days of  
16 first occupancy, except by permission of the Association. It is the obligation of each Owner  
17 to keep and maintain his Lot in a neat, clean and orderly manner. All lawns and  
18 landscaping must be kept clean, weed-free, watered, mowed and trimmed. All structures  
19 located on any Lot shall be, at all times, maintained in good condition. All sidewalks and  
20 driveways on any Lot, whether owned in whole or in part of the Owner of such Lot, shall  
21 be kept and maintained in a safe, clean and orderly condition by the Owner of the Lot.  
22 After the siting of a residential structure on a Lot is complete, any further tree cutting or  
23 removal is prohibited unless previously approved in writing by the Association.  
24  
25

#### 26 ARTICLE 5

#### 27 EASEMENTS

28 5.1 Easements for Utilities and for Storm Drainage. Easements for installation  
29 and maintenance of utilities and drainage facilities are reserved as shown on the recorded  
30 plat. Within these easements, no structure, planting or other material shall be constructed,  
31 placed or permitted to remain which may damage or interfere with the continuing  
32 maintenance of utilities existing therein, or which may change the direction of flow of  
33 drainage in the easements, or which may obstruct or retard the flow of water through  
34

1 drainage channels in the easements. The easement area of each Lot and all improvements  
2 on it shall be maintained continuously by the owner of the Lot, except for those  
3 improvements for which a public authority or utility company is responsible. If two (2) or  
4 more Lots are combined into one (1) building site, the five-foot (5') side easements shall,  
5 subject to applicable building codes, apply only to the exterior side lines of the combined  
6 building site.  
7

8 5.2 If an easement is used for installation or maintenance of a drainage pipe or  
9 other utility line by anyone other than the underlying Owner thereof, the person using the  
10 easement shall restore the easement to its condition prior to said use.

11 5.3 All permanent utility connections shall be underground.  
12

#### 13 ARTICLE 6

#### 14 MISCELLANEOUS

15 6.1 Natural Vegetation Buffer. Tree removal is limited to removal necessary to  
16 clear a building site and removal of dangerous trees that, if not removed, would threaten life  
17 or property, or trees less than four inches (4") in diameter breast high.  
18

19 Requests for removal of dangerous trees are to be made in writing and  
20 approved by the Association. The actual removal is to be done by the Lot Owner.

21 Any dangerous tree is to be cut as close to the ground as possible. The  
22 stump may be allowed to remain, but all wood and limbs shall be removed from the Lot.

23 The Association shall levy and collect from any owner a fine of not less than  
24 \$1,000.00 per tree, for the removal of any tree(s), except in compliance with this Article.  
25

26 6.2 Oil and Mining Operations. No oil drilling, oil development operations, oil  
27 refining, quarrying or mining operations of any kind shall be permitted upon the Properties  
28 nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon, or in,  
29 any Lot.

30 6.3 Wells and Waterworks. The Declarant owns and operates a well and  
31 waterworks supplying water for public use located on Lot 34, Lot 27, Lot 41 and Lot 12 of  
32 the Property. Declarant is required, so long as it owns at least 13 Lots, or for five years,  
33 whichever period is shorter, to keep the water supplied from said wells free from impurities  
34  
35  
36

1 which might be injurious to the public health. Thereafter the obligation shall devolve upon  
2 the Association.

3 It is the purpose of these grants and covenants to prevent certain practices  
4 hereinafter enumerated in the use of the Property which might contaminate said water  
5 supply.  
6

7 The Declarant, its successors and assigns, including all Lot Owners, will not  
8 construct, maintain or suffer to be constructed or maintained upon the Properties, or any Lot,  
9 and within one hundred feet (100') of any well herein described, so long as the same is  
10 operated to furnish water for public consumption, any potential source of contamination,  
11 such as cesspools, sewers, privies, septic tanks, drainfields, manure piles, garbage of any  
12 kind or description, barns, chicken houses, rabbit hutches, pigpens, or other enclosures or  
13 structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry  
14 chemicals, herbicides or insecticides.  
15

16 These covenants shall run with the land, shall survive the otherwise  
17 termination of this Amended Declaration, and shall be binding on all parties having, or  
18 acquiring, any right, title or interest to the Property, or any part thereof, and shall be binding  
19 upon, and inure to, the benefit of each Owner thereof.  
20

21 6.4 Water Supply. No individual well or water supply system shall be permitted  
22 on any Lot.

23 ARTICLE 7  
24 GENERAL PROVISION

25 7.1 Enforcement. In the event that any of the covenants hereinabove set forth  
26 are violated, the Association may:  
27

28 7.1.1 Give the Owner notice to correct the violation, fixing reasonable time  
29 limits;

30 7.1.2 Correct such violation without additional notice to the Owner by such  
31 actions deemed most reasonable to the Association, including  
32 completing any improvement, or totally removing any improvement,  
33 object or thing which violates the restriction. In this event, the Owner  
34 shall reimburse the Association for all expenses reasonably incurred  
35

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

and the Association shall have a lien on the affected Lot which shall be subject to foreclosure by the Association, and shall include reasonable attorney fees;

7.1.3 Seek the aid of the Superior Court of Kittitas County, Washington to obtain an injunction or such other relief as the court deems equitable. In this event the Owner shall be obliged to pay all costs reasonably incurred by the Association, including reasonable attorney fees.

7.2 Severability. The invalidity of any one of these covenants shall in no way affect any other provisions, which shall remain in full force and effect.

7.3 Amendment. These Amended Covenants, Conditions and Restrictions shall endure until December 31, 2002, after which time, unless terminated by a two-thirds (2/3) vote of the Owners, they shall be automatically extended for successive periods of ten (10) years. Until such time as fifty per cent (50% of the Lots have been sold by the Declarant, Reflection Lake, Inc., this Amended Declaration may be further amended by an instrument signed by the Owner or Owners of not less than fifty per cent (50%) of the Lots. Once fifty per cent (50%) of the Lots have been sold by the Declarant and are no longer owned by the Declarant, this Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than seventy-five per cent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots. Any amendment, to be effective, must be duly acknowledged and recorded.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amended Declaration on this 15th day of September, 1992.

REFLECTION LAKE, INC.

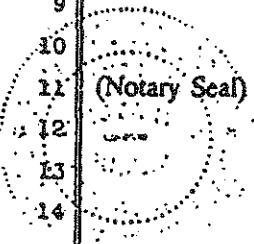
By: H. D. Hackney  
H. D. Hackney, President

VOL 335 PAGE 690

1 STATE OF WASHINGTON )  
2 ) ss.  
3 County of Spokane )

4 I certify that I know, or have satisfactory evidence, that H.D. HACKNEY is the  
5 person who appeared before me, and said person acknowledged that he signed this  
6 instrument, on oath stated that he was authorized to execute the instrument and  
7 acknowledged it as the President of REFLECTION LAKE, INC. to be the free and  
8 voluntary act of such party for the uses and purposes mentioned in the instrument.

9 DATED: September 15, 1992.



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at Spokane.  
My Appointment Expires: 2/9/94

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

C:\WP51\UC50A\_4302.jlc  
09/15/92 (Tue)  
4:28 pm

574674

COPIES  
1994-03-01

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
LAKE EASTON ESTATES DATED MARCH 1, 1994.

This Amended Declaration is made this 1st day of March, 1994 by Beaconsfield Associates, Inc., hereinafter referred to as declarant. Pursuant to Section 7.3 of Declaration of Covenants, Conditions and Restrictions as amended September 15, 1992, declarant hereby amends following sections of the Covenants, Conditions and Restrictions of Lake Easton Estates:

Section 4.8 is hereby deleted and restated as follows:

4.8 No manufactured homes, permanent double-wide homes or modular homes may be placed within the plat of Lake Easton Estates. No home may be constructed which is less than 1,600 sq feet, excluding attached or unattached garage and other permitted outbuildings.

Section 6.1 is amended as follows:

6.1 Natural vegetation buffer. With respect to owners subsequent to declarant, tree removal is limited to removal necessary to clear building site and removal of dangerous trees that, if not removed, would threaten life or property, or trees less than four inches in diameter breast high.

Requests for removal of dangerous trees are to be made in writing and approved by the Association. The actual removal is to be done by the Lot Owner.

Any dangerous tree is to be cut as close to the ground as possible. The stump may be allowed to remain, but all wood and limbs shall be removed from the lot..

The Association shall levy and collect from any owner a fine of not less than \$1,000.00 per tree, for the removal of any tree(s), except in compliance with this Article.





580376

2

RECORDED  
INDEXED

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LAKE EASTON ESTATES DATED MARCH 30, 1995

CE  
3:27  
95 APR

This Amended Declaration is made this 30th day of March, 1995, by Beaconsfield Associates, Inc., hereinafter referred to as Declarant.

Pursuant to Section 7.3 of Declaration of Covenants, Conditions and Restrictions as amended September 15, 1992, Declarant hereby amends the following sections of the Covenants, Conditions and Restrictions of Lake Easton Estates:

Section 4.8 is amended to read as follows:

4.8 No manufactured homes, permanent double-wide homes or modular homes may be placed within the Plat of Lake Easton Estates. No home may be constructed which is less than 1,200 square feet including attached or unattached garage or other permitted outbuildings.

Section 6.3 is hereby deleted.

Section 6.4 is hereby deleted.

In all other respects, Declaration of Covenants, Conditions and Restrictions of Lake Easton Estates as amended September 15, 1992, as subsequently amended March 1, 1994, are hereby reconfirmed.

IN WITNESS WHEREOF the undersigned Declarant has executed this Amendment to Declaration this 30th day of March, 1995.

BEACONSFIELD ASSOCIATES

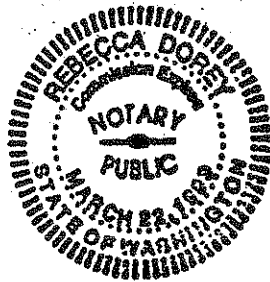
By Barton H. Clennon  
BARTON H. CLENNON

VOL 364 PAGE 682

STATE OF WASHINGTON )  
County of Chelan ) ss.

I certify that I know or have satisfactory evidence that BARTON H. CLENNON is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the Managing Partner of BEACONSFIELD ASSOCIATES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 30, 1995.



Rebecca Dorey  
Notary Public in and for the  
State of Washington.  
My commission expires: 3/22/99

Recorded in the County of Kittitas, WA  
Beverly M. Allenbaugh, Auditor

10.00

199907220039 3:41pm 07/22/99

001 4015666 04 05  
U10 J 0 0 00 2.00

**AFTER RECORDING MAIL TO:**

Cone, Gilreath, Ellis & Cole  
P. O. Box 337  
Cle Elum, WA 98922

**Document Title:**

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LAKE  
FASTON ESTATES DATED JULY 13, 1999

**Reference Number(s) of Related Documents:**

Additional numbers on page \_\_\_\_\_ of document.

**Grantor(s): (Last name, first name, middle initial)**

1. Shoval, Eli
- 2.
- 3.
- 4.

Additional Names on page \_\_\_\_\_ of document.

**Grantee(s): (Last name, first name, middle initial)**

1. Public
- 2.
- 3.
- 4.

Additional names on page \_\_\_\_\_ of document.

**Abbreviated Legal Description as follows:**

\_\_\_\_ Complete legal description is on page(s) \_\_\_\_\_ of document.

**Assessor's/Treasurer's Property Tax Parcel Number(s):**

20258

199907220039

AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF LAKE EASTON ESTATES  
DATED JULY 13<sup>th</sup> 1999

This amended Declaration is made this 13<sup>th</sup> day of July, 1999, by Eli Shoval,  
hereinafter referred to as Declarant

Pursuant to Section 7.3 of Declaration of Covenants, Conditions and Restrictions  
as amended September 15, 1992, Declarant hereby amends the following  
sections of the Covenants, Conditions and Restrictions of Lake Easton Estates:

Section 4.8 is amended to read as follows:

Manufactured homes meeting all requirements of the county building code,  
including snow load requirements, may be built on lots within the plat of  
Lake Easton Estates, provided they have poured concrete foundation, are no  
less than 1200 square feet in area and have two car garage. No home may  
be constructed within the plat of Lake Easton Estates which is less than  
1200 square foot excluding garage and other permitted outbuilding.

In all other respects, Declaration of Covenants, Conditions and Restrictions of Lake  
Easton Estates as amended September 15 1992, as subsequently amended March 1,  
1994, and as subsequently amended March 30, 1995 - are hereby reconfirmed

IN WITNESS WHEREOF the undersigned Declarant has executed this  
Amended Declaration this 13<sup>th</sup> day of July, 1999

  
Eli Shoval

199907220039

State of **CITY OF JERUSALEM**  
County of **CONSULATE GENERAL OF THE**  
**UNITED STATES OF AMERICA**

On this day personally appeared before me Eli Shoval to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Dated this 13<sup>th</sup> day of July, 1999

**ABDELNOUR ZAIBACK**  
CONSUL OF THE UNITED STATES  
OF AMERICA

*Abdelnour Zaiback*  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

**From:** "Russell, Danielle (DOH)" <Danielle.Russell@doh.wa.gov>  
**Subject:** Lake Easton Estates #6  
**Date:** June 28, 2012 9:17:59 AM PDT  
**To:** lynn.brewer@me.com

1 Attachment, 2 KB

Danielle J. Russell

Washington State Department of Health  
Division of Environmental Public Health  
Office of Drinking Water  
16201 East Indiana Suite 1500 Spokane Valley, WA 99216  
Phone: 509.329.2136 Fax: 509.329.2104  
Email: [danielle.russell@doh.wa.gov](mailto:danielle.russell@doh.wa.gov)

**From:** Russell, Danielle (DOH)  
**Sent:** Wednesday, June 27, 2012 4:28 PM  
**To:** 'lynn\_brewer@msn.com'  
**Cc:** Mau, Russell E (DOH)  
**Subject:** Well Log

Hi Lynn --

The name of the water system that you are on is called Lake Easton Estates #6 (ID#AA196F; Kittitas Co.)

Here is what the WAC has to say about building within a sanitary control area....

WAC 246-291-100(4) (a) & (b)

The owner shall ensure that a sanitary control area is maintained around all sources for the purpose of protecting them from existing and potential sources of contamination.

The minimum sanitary control area shall have a radius of one hundred feet for wells and two hundred feet for springs, unless engineering justification supports a smaller area. The justification must address geological and hydrological data, well construction details and other relevant factors necessary to assure adequate sanitary control.

As I mentioned during our call, when we evaluate these "reduced sanitary control area waivers", we look at the well log. I took this opportunity to locate the well log for this system and found that it is drilled to 100-feet, but that it's confining layers are gravel (which does little to support a waiver). But on the other hand, you are proposing to put in a shop with (I assume) a concrete floor. Furthermore, you will store all chemicals, fuels, pesticides, etc. in secondary containment so that if they leak, it will leak into another container and not on the ground.

So while the well does not have fabulous confining layers, it is not as though you are putting in a septic drain field near the well.

Here's your next steps:

Before we can allow the applicant (you) to build within the sanitary control area, the applicant needs to provide:

- Site and construction details that will assure adequate sanitary control and protection for the well from potential sources of contamination. And according to the WAC listed above, this needs to be prepared by a professional engineer. He or she will want to see a copy of the attached well log.
- Secondly you must get permission from the owner(s) of the Group B water system to build within the sanitary control

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

Our records show that the owner is listed as: Lake Easton Homeowners Assn PO Box 1745  
Gig Harbor WA 98335 (253)606-6015  
And the primary contact person for the system is: Kurt Kuntz (same address and same phone  
number)

I am copying Russell Mau on this e-mail (you indicated that you spoke with him earlier). He is the  
Regional Engineer for Kittitas county and will be evaluating your request.

Let me know if you need anything further.

Best wishes! Djr

**Danielle J. Russell**

**Washington State Department of Health**  
Division of Environmental Public Health  
Office of Drinking Water  
16201 East Indiana Suite 1500 Spokane Valley, WA 99216  
Phone: 509.329.2136 Fax: 509.329.2104

**From:** Holly Duncan <holly.duncan@co.kittitas.wa.us>  
**Subject:** RE: Request for Information regarding Group B wellhead Setback  
**Date:** June 25, 2012 10:16:25 AM PDT  
**To:** 'Lynn Brewer' <lbrewer@integrityinstitute.com>

1 Attachment, 5 KB

Hello Lynn,

It is a Washington Administrative Code 246-291-100(4).

Holly

---

**From:** Lynn Brewer [mailto:lbrewer@integrityinstitute.com]  
**Sent:** Sunday, June 24, 2012 11:03 AM  
**To:** Holly Duncan  
**Cc:** Dan Valoff; Alan Crankovich; Russell E (DOH) Mau  
**Subject:** Request for Information regarding Group B wellhead Setback

Holly -

Can you please provide us with the specific Kittitas County Code that prohibits building a shop within 100' of our Group B wellhead in Lake Easton Estates on Lot 27?

As you know we applied for and were denied a **SIDE** setback variance. We believe Mr. Valoff may have relied in part upon Mr. James Rivard's SPECIFIC request that the variance be denied based upon the location of the wellhead at the **FRONT** of our property ERRONEOUSLY SPECULATING that THERE WAS A RESTRICTIVE COVENANT - WHICH THERE IS NOT.

In reviewing the correspondence between Mr. Dan Valoff and Mr. Rivard on 6/6/12 - (shown below) you will see that Mr. Rivard said :

*"I have to recommend that the variance be denied. It appears that the proposed shop is within the 100 foot sanitary circle. Community water systems such as Group A and B systems typically have a restrictive covenant that does not allow for the construction of structures within the sanitary circle to protect public health and the water supply from potential contaminants."*

We DO NOT HAVE SUCH A RESTRICTION relative to building a shop within 100' of the wellhead. Our Water Use Declaration (recorded in Vol 362 at Page 1352-1353) - filed in 1995 and CC&R's (recorded at Vol 335 at Page 688-689) filed in 1992 (which Mr. Rivard acknowledges he had in front of him when he made these statements) say that no **"cesspools, sewers, privies, septic tanks, drainfields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pigpens, or other enclosures or structures for the keeping or maintenance of fowls, or animals, or storage of liquid or dry chemicals, herbicides, or insecticides."** can be built within 100' of the wellhead. Clearly our shop does not consist of any of these!!!! The absence of any restrictive covenants is confirmed by the fact that the County has allowed 6 of the 9 Group B wellheads in Lake Easton Estates to have buildings of similar nature less than 100' from the wellheads and in one case 22' from the wellhead.

We are appealing the "side setback variance" decision but we would like to know--where anything within the County Code prohibits us building within 100' because according to Russell Mau, Head of Engineering with Washington State Department of Health, such an interpretation (absent anything filed that specifically restricts a shop of this nature), we can build within the 100' sanitary protection area. Mr. Rivard seemed to confirm the absence of state and county codes only stating in his email to Mr. Valoff that there is "typically" a "restrictive covenant" which there clearly is not in Lake Easton Estates.



Although, for purposes of preparing our appeal, I have requested an explanation from Mr. Valoff as to the detrimental nature of such a building to the "public health, safety, and general welfare" that he used for denying our request, my request of you relates to the BUILDING PERMIT approval process. I am going to assume that Mr. Valoff did not rely upon the suggestion of Mr. Rivard since **Mr. Rivard was clearly wrong in his speculation and interpretation** (which is unfortunate since he had the CC&Rs and Water Use Declaration of Lake Easton Estates in front of him at the time he requested the side setback variance be denied). We are also going to assume that given **this was a SIDE setback NOT a FRONT setback variance request**, Mr. Valoff did not use the Wellhead as one of the "public safety issues" in his denial.

Based upon the above, and **in preparation for filing our building permit AND SITE MAP** I would like the specific County Code or written Policy that would allow for a denial of such a building permit of our shop within 100' of the Group B wellhead. As you know 6 of the 9 Group B wells in our sub-division have buildings of similar nature less than 100' from the wellhead and as close as 22' from the wellhead because **THERE IS NO RESTRICTIVE COVENANT**. Based upon this, and absent any specific Kittitas County Code to the contrary, we of course would request that Mr. Rivard would review the documentation he had at the time he made his statement to Mr. Valoff and retract his statement so that the building process can continue.

While we are happy to file the appeal, if Mr. Valoff relied upon Mr. Rivard's unintentional erroneous statements not only did Mr. Valoff err, it makes the appeal unnecessary particularly when you see that Mr. Valoff's commentary on the application said that the building would then be built at the same setback allowed at the time we bought the property - Forest & Range which has a 10' setback and obviously is not a safety issue. We are happy to prepare our site plan and build at the 10' side setback of the Forest & Range zone in place at the time we bought the property; however, we want to avoid any further delays that may be caused by Mr. Rivard's erroneous statements about restrictive covenants. Absent any county code that has since gone into effect, we would like to prepare our site plan for building the proposed shop at 50' from the wellhead.

Thank you for your assistance in this matter.

Here's the exact correspondence between Dan Valoff and James Rivard on June 6 - for your reference:

TO James RIVARD FROM Dan VALOFF:

*James,*

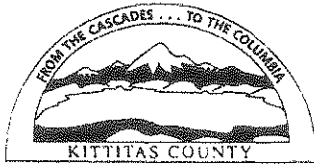
*Can you evaluate these comments (from homeowner Mrs. Davenport in objection to the Variance Request) regarding the community well and the Brewer setback variance request (VA-12-000002)? Will the new structure impact the community well?"*

TO Dan VALOFF FROM James RIVARD:

*"Hi Dan,*

*To the best of my knowledge and ability to interpret the attached documents and the documents included within the link [PROVIDED BY JILL DAVENPORT - HOMEOWNER 6 LOTS AWAY (MORE THAN 500' FROM OUR HOME)], Perhaps the applicant can provide a scaled drawing showing the proposed shop is not within the 100 foot sanitary circle or move the proposed shop back or to another location on the lot outside of the sanitary circle? Should you have any questions feel free to contact me or staff."*

*James Rivard  
Environmental Health Supervisor  
Kittitas County Public Health Department"*



## Kittitas County Planning Department

Room 182, Courthouse • Ellensburg, WA 98926 • (509) 962-7506

October 5, 1994

Mr. G. Thomas Dohn  
Dohn Law Offices, Inc., P.S.  
105 No. 3rd Street  
Yakima, Washington 98901

RECEIVED OCT. 6 1994

**RE: Commercial Forest Zoning District**

Dear Mr. Dohn:

Pursuant to our conversation today, existing lots of record are eligible for development even if the existing lot size is below the minimum of the current zoning classification. All new land uses are subject to the minimum functional standards of the zoning district such as; permitted uses, conditional uses, yard setbacks and other special restrictions. Pre-existing lots are vested or "grandfathered" into the new the classification, regardless of the lot's size.

The Commercial Forest Zoning District and comprehensive plan designation were part of Kittitas County's Growth Management Act responsibilities. Adopted in January of 1994, the Commercial Forest Zone is the county's designated forest lands of long-term commercial significance. As you are aware, the Commercial Forest Zone requires a minimum lot size of 80 acres for new lots created through subdivision or exempt land segregation. Also, the Commercial Forest Zone requires a 200 foot yard setback along all property lines. The zone does allow a reduction of the setback to a buildable area of a parcel to a dimension that is less than one hundred feet in width and/or in depth, the setback requirement from all yard lines shall be reduced to a point that allows for a maximum building area of one hundred feet in width and/or one hundred feet in depth.

The parcels contained in the Sawmill Flats development are considered developable lots provided these provisions can be met, along with the standard building, fire code, access and environmental health standards of the county. Construction of a single-family residence is a specifically listed permitted use in the Commercial Forest Zoning District.

I am enclosing a copy of the Commercial Forest Zoning District for your information. Please contact me if you have additional questions.

BREWER NOTICE OF APPEAL - VARIANCE DECISION (VA-12-00002)

---

Sincerely,

**KITTITAS COUNTY PLANNING DEPARTMENT**

  
Mark R. Carey  
Planning Director

CC: Mike Burtness, Building Department Director  
John Wolpers, Environmental Health Director

## Julie Kjorsvik

---

**From:** Lynn Brewer <lbrewer@integrityinstitute.com>  
**Sent:** Monday, July 02, 2012 3:11 PM  
**To:** Julie Kjorsvik  
**Subject:** Brewer Notice of Appeal VA-12-00002 (with corrections)  
**Attachments:** Brewer Notice of Appeal (with corrections) - Kittitas County BOCC.pdf; ATT00001.htm; image001.png; ATT00002.htm

Julie -

Attached is the corrected Notice of Appeal with the exhibit changes.

Can you please confirm you have received this e-mail and the attached Notice of Appeal. It should be stamped with today's date and the other one destroyed. The exhibits remain exactly the same.

Thanks so much.

RECEIVED

JUL -2 2012

1st  2nd  3rd   
KITTITAS COUNTY BOARD OF COMMISSIONERS  
Neil C.  
Kirk H.

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

Douglas Richard Brewer (Appellant)  
Lynn Brewer (Appellant)  
P.O. Box 145  
Easton, WA 98925

ZONING SETBACK VARIANCE # (VA-12-00002)

DATE OF DECISION: June 18, 2012

DEADLINE and DATE OF FILING OF APPEAL: July 2, 2012

NOTICE OF APPEAL

Appellants, and each of them, hereby respectfully request the Kittitas Board of County Commissioners (BOCC) review of the denial by Kittitas County Community Development Services (KCCDS) of the Appellants' zoning setback variance request and submit the following information in support of their appeal in accordance with KCC 15A.07.010(2):

**a. Decision:** VA-12-00002 Denial of Brewer Zoning Setback Variance

**b. Name and Address of Appellant:**

Douglas R. Brewer / Lynn Brewer (Homeowner / Applicant / Appellant)  
Mailing Address: P.O. Box 145; Easton, WA 98925  
Physical Address: 770 Kachess River Road; Easton, WA 98925

The interest in this matter is that Appellants are the homeowners of the subject property and Applicants of the Variance

**c. The reason why the Appellants believe the decision of Kittitas County Community Development Services (KCCDS) is wrong is based upon the following:**

1) Unusual Circumstances or Conditions Apply and Preservation of Substantial Property Right Possessed by Other Owners in the Same Vicinity

When Appellants bought their lot in 2004, the property was zoned Forest and Range, which provided for 10' side setbacks. The home AND proposed garage/shop was noted on the original 2004 site plan submitted and

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

approved by KCCDS at the 10' side setback afforded Appellants under Forest & Range **which Appellants believe grandfathers them in at a minimum of 10' setbacks as established by Forest & Range** (See Exhibit A attached hereto). Unbeknownst to Appellants, their property was subsequently rezoned as Rural Residential, causing the side setbacks to be moved to 15'. Appellants applied for a 5' variance. As Appellants were unaware of the rezoning at the time they applied for the variance, KCCDS sent out Appellants' Variance Application and noted the new Rural Residential zoning setbacks of 15' which if then granted a 5' variance, Appellants would be afforded the same benefit as they had been at the time their building permit was issued in 2004, and the same benefit granted to all other property owners who built prior to the rezoning. If the 5' variance is denied, it means that:

- i. The rezoning has caused **unusual circumstances or conditions to the property or the intended use that does not apply to the other properties in the area** since all other building on lots were done at 10' setbacks afforded by Forest & Range.
- ii. Appellants are being **denied the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same area** who were permitted to build similar shops/garages because they had been built prior to the rezoning.

2) **Variance is Not Materially Detrimental to the Public Welfare or Injurious to Property in the Vicinity**

KCCDS claims that the granting of the variance would be “materially detrimental to the public welfare or injurious to property in the vicinity.” Appellants disagree. As noted in the “Proposal” in the Notice of Application prepared and written by KCCDS (See Exhibit B attached hereto):

*“Douglas Brewer has submitted zoning setback variance application to encroach 5 feet into the side setback. The subject property is zoned Rural Residential.”*

The Application and language of the Proposal set forth above as written by KCCDS when it sent out the variance for comment established the foundation for the variance as Rural Residential and Appellants have accepted the County's proposed 5' setback variance from Rural Residential would essentially grandfather their property and therefore argue the variance should not have been denied.

The encroachment of 5' into the Rural Residential Side Setback would essentially return the property to Forest & Range and thus would not be detrimental to the public welfare or injurious to property in the vicinity as all

other properties in the sub-division were built at Forest & Range setbacks. Furthermore, the proposed garage/shop was noted on the original site plan in 2004 approved by KCCDS at the 10' setback afforded by Forest & Range and as such Appellants take the position that they are grandfathered in. Meaning, so long as the 5' variance from Rural Residential setbacks is granted to allow building at a 10' setback, both the Appellants and KCCDS are in agreement.

However, Appellants argue that by KCCDS changing its Proposal, after the period of comment, without amendment, and simply denying the variance has left Appellants with no other alternative but to file this Appeal. Appellants believe the confusion over the rezoning has had a detrimental impact on their ability to build and without the 5' variance, returning the property to its prior zoning as approved at the time the site plan was developed, submitted, and approved, Appellants will find themselves unable to build the proposed shop as their home was positioned to allow minimal space to build the proposed shop as set forth in 2004. Appellants now find themselves unduly restricted by the rezoning and the proposed 5' variance provides sufficient remedy without being materially detrimental to the public welfare or injurious to properties in the vicinity.

3) Decision Adversely affects the realization of the comprehensive development pattern in the area.

KCCDS claims that the 5' variance, if granted, will adversely affect the comprehensive development pattern in the area. Appellants disagree. The Lake Easton Estates sub-division is a cluster sub-division built under Forest & Range zoning consisting of 52 lots of approximately ½ acre. (*See Exhibit C attached hereto*). With the exception of the handful of lots that have not yet been developed, all homes in the area were built with Forest & Range setbacks and Appellants were approved in 2004 for 10' side setbacks and the proposed shop was duly noted on those plans and therefore approved by KCCDS.

Contrary to KCCDS's argument, **the failure to grant the variance** will have a detrimental impact on the development pattern in the area as **THERE WILL BE UNINTENDED CONSEQUENCES** adversely affecting the comprehensive development pattern in the area as Lots 39, 41, 43, and 32, as highlighted in yellow on Exhibit C, **would likely become unbuildable**, or at the very least, significantly restricted in the buildable area, if no variance is given to Lot 27 as it sets a precedence that would disable the aforementioned lot owners. As noted in the attached letter from lot owner 41 (*See Exhibit D attached hereto*), the rezoning has created a detrimental impact as it increased the side setbacks from 10' under Forest & Range to 15' under Rural Residential and increased backyard setbacks from 10' to 25' substantially reducing the buildable area on each lot, particularly if no relief from the

sanitary protection areas are provided by the state of Washington. Rural Residential set backs are based upon 5 acre lots which allow for sufficient room to build with the greater setbacks whereas Forest & Range cluster subdivisions provide for far smaller lots of ½ acre making the increased setbacks detrimental to homeowners. The impact of a reduction of square footage on a ½ lot is significant when you reduce the buildable area from 5 acres to ½ acre. By its very nature, **the rezoning created unusual circumstances that adversely affect the comprehensive development pattern in the area.**

4) **Health and Safety Issues:**

KCCDS states three reasons the variance is being denied that are capricious when considering Appellants' variance would afford them the same setbacks had no rezoning occurred thus the following arguments are spurious as these issues did not exist prior to the rezoning:

- a. *Be detrimental to the public health, safety, and general welfare;*
- b. *Adversely affect the established surrounding vicinity and planned uses;*
- c. *Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.*

We submit, given all homes to date in Lake Easton Estates have been built under Forest & Range and no “health and safety” issues were present under Forest & Range, the arguments presented by KCCDS in the denial do not meet the doctrine of fairness.

This leaves us to believe that the “public safety issues” relate to a wellhead that sits at the FRONT of the property and although should have had no bearing on the request for a SIDE setback variance, we feel the need to address the matter as part of the appeal since the issue is now part of the official record. Furthermore, any variance related to the wellhead falls specifically under the jurisdiction of the Washington State Department of Health as set forth in the WAC and any granting of a variance to build near the wellhead is to be presented to Washington State Department Health as dictated by the WAC.

Although Appellants have attempted to determine the specific “health and safety” issues KCCDS determined to be present as the basis for the denial (given no such issues existed under Forest & Range), and have been informed verbally by staff member Dan Valoff that the wellhead at the front of the property had absolutely no bearing on the denial, we have strong reason to believe the comments submitted by Mr. James Rivard of Kittitas County Public Health (*See Exhibit E attached hereto*) presented the only health and safety issues upon which KCCDS could have relied.



BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

Lake Easton Estates has 9 Group B wells servicing the 52 - ½ acre lots. Group B wells are required to have a 100' sanitary control area. Although the well house for Appellants home sits on the adjacent lot, the wellhead is on Lot 27 owned by Appellants. Mr. Rivard was presented the Water Users' Declaration and CC&Rs for Lake Easton Estates and falsely drew the conclusion:

*"To the best of my knowledge and ability to interpret the attached documents and the documents included within the link, **I have to recommend that the variance be denied.** It appears as though the shop is within the 100 foot sanitary circle. Community water systems such as Group A and Group B **typically** have a restrictive covenant that does not allow for the construction of structures within the sanitary circle to protect public health and the water supply from potential contaminants."*

The "attached documents" to Mr. Rivard's email, upon which Mr. Rivard relied, are the Lake Easton Estates Water Users' Declaration and CC&Rs, as required under the WAC to be filed as part of the installation of the Group B wells. Despite Mr. Rivard's speculation as to the presence of "restrictive covenants," no such restrictive covenants exist within Lake Easton Estates either in the Water Users' Declaration or CC&Rs that prohibit any building within the 100' sanitary protection area surrounding the wellheads but merely establish the types of building that can occur. This is evidenced by the fact that the **100' Sanitary Circle of every Group B well in Lake Easton Estates has been encroached except for the one on Appellants' property.**

For clarification, the specific language regarding the restrictive covenants in the Water User's Declaration recorded on January 27, 1995 with Kittitas County in Volume 362 Page 1370-1376 (Property Affected Lot 41) and a duplicate copy recorded on January 27, 1995 in Volume 362 Page 1349-1355 (Property Affected Lot 31), state the following:

**"8. Prohibited Practices. No person will construct, maintain or suffer to be constructed or maintained upon the property above described and within 100 feet of the well herein described, so long as the same is operated to furnish water for public consumption, any of the following: **Septic tanks and drainfields, sewer lines, underground storage tanks, County or State roads, railroad tracks, vehicles, structures, barns, feeding stations, grazing animals, or enclosures for maintaining fowl or animal manure, liquid or dry chemical storage, herbicides, insecticides, hazardous waste or garbage of any kind.**"**

In fact, we actually find **Kittitas County itself has violated Lake Easton Estates Water User's Declaration, and thus the WAC, by approving the installation of "County roads" within the 100' sanitary circles (as noted on Exhibit E), despite the specific "prohibited practices."** Therefore, for Kittitas County to now deny Appellants the opportunity to build within the 100' setback, when the County itself is in violation of the Water User's Declaration would be capricious and violate the doctrine of fairness. Presumably if the County Roads encroachment on the 100' setback do not create a public health and safety issue, then clearly our proposed shop does not, particularly given its limited use and similarities to the uses of other property owners in Lake Easton Estates.

Additionally, the Lake Easton Estates Restrictive Covenants (CC&Rs) recorded on or about the 23<sup>rd</sup> day of February 1990 in Volume 302 page 636-691 Restrictive Covenants (CC&Rs) do not deny the right to build within 100' of the well, but rather is very specific about what types of building / uses are prohibited, namely:

6.3 Wells and Waterworks. . . .

The Declarant, its successors and assigns, including all Lot Owners, will not construct, maintain or suffer to be constructed or maintained upon the Properties, or any Lot, and within one hundred feet (100') of any well herein described, so long as the same is operated to furnish water for public consumption, any potential source of contamination, such as **cesspools, sewers, privies, septic tanks, drainfields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pigpens, or other enclosures or structures for the keeping or maintenance of fowls, or animals, or storage of liquid or dry chemicals, herbicides, or insecticides."**

Except for Appellants' home, every other home built in Lake Easton Estates on a lot with a Group B well has been afforded the right to encroach the sanitary protection area (*as highlighted in green on "Exhibit C"*) which demonstrates that KCCDS does not believe building within the sanitary protection area creates any public health, safety and general welfare issues given KCCDS approved every single building permit. Therefore, any argument by KCCDS that the proposed building if built by Appellants within the sanitary protection area is a health and safety issue is capricious. Given our shop will be similar in nature and presumably used for the same purposes as our neighbors, Appellants argue that without a written policy and procedure by the County prohibiting any building, then we believe the proposed building which will encroach the sanitary circle should be allowed. The Public Health Department, as noted in the attached email from Ms. Holly Duncan, *marked as Exhibit F*, Kittitas County bases its standards on the WAC and **no other Kittitas County Code exists which prohibit such building within the 100' sanitary circles.**

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

To the best of our knowledge, KCCDS has not required a single variance from the State of Washington, prior to issuing building permits within Lake Easton Estates where these homes have encroached the 100' sanitary circle which means, if true, KCCDS has further violated state law. Appellants have an open records request to determine to what extent such actions may have occurred and have been informed that the response to this records request shall be expected by August 31, 2012.

Any variance for building within the sanitary protection area is governed by WAC 246-291-100(4) and thus falls to the State of Washington Department of Health to administer. As noted in the attached email from Danielle Russell from the Washington State Department of Health to Appellants, the State of Washington does allow for building within the sanitary protection areas and has a very specific process for approval of variance requests. (*See Exhibit G attached hereto*). Appellants have begun the process for obtaining the requested variance and expect with a proper mitigation plan, the variance will be allowed but KCCDS is not responsible for the issuance of that sanitary protection area variance and thus should not have based its decision to deny the Appellants' side setback variance application on the location of the wellhead.

**d. Desired outcome:**

Appellants hereby request that the BOCC approve a variance that would grant Appellants the right to encroach the Rural Residential side setback by 5' thereby returning the property to its zoning under which Appellants had been afforded when they bought the property and in accordance with the site plan attached hereto as Exhibit A. Given, this site plan was approved by KCCDS in 2004 when the Appellants obtained their original building permit showing the future garage which they now seek to build, Appellants believe the variance should be approved given their grandfather status. Any issues that KCCDS now claims would prevent Appellants the right to build at 10' setbacks, were created with the property rezoning.

Appellants are willing to avoid any "public safety, welfare or health" issues that could be caused by further encroachment on the side setback by compromising on the variance application and accept KCCDS's position in the Proposal sent out for comment, that the 5' setback variance request was based upon Rural Residential zoning. The side setback would be "grandfathered" to its original state. As noted in *Exhibit H*, Kittitas County has allowed properties to be "grandfathered" when zoning changes occur due to the Growth Management Act responsibilities of Kittitas County.

Appellants further request that KCCDS defer any arguments they may use on the placement of the wellhead and the wellhead protection area to the State of Washington Department of Health as noted in Exhibit G so that Appellants may proceed with the variance process for the wellhead.

Had Appellants' property been zoned Range & Forest and a 5' variance request denied, Appellants could have still built the proposed building at a 10' setback. The fact that the

BREWER NOTICE OF APPEAL – VARIANCE DECISION (VA-12-00002)

property is now Rural Residential, the only relief Appellants have in order to be able to build the proposed shop as set forth in the 2004 site plan is to obtain a 5' variance to return the property to a Forest & Range zoning setback. This means that Appellants are forced to pay an additional \$500 to appeal the matter necessitated only because of the rezoning. Based upon this, Appellants would hereby request a refund of the \$500 fee paid to appeal this matter as we feel as though the rezoning created sufficient unusual circumstances that based upon the written proposal of KCCDS in Appellants' Variance Application would have allowed for the 5' variance from Rural Residential and would have returned the property to Forest & Range making this appeal unnecessary.

e. **Appeal fee has been submitted herewith.**

***LIST OF EXHIBITS ATTACHED HERETO:***

- A – Original 2004 Site Plan approved by KCCDS showing “future garage”*
- B – Notice of Application Dated May 22, 2012 as prepared and sent out by KCCDS*
- C – Subdivision Plat Map (COMPAS Mapping System) showing Wellhead Sanitary Protection Areas noted by circles  
Properties highlighted in yellow (unbuildable if no variance is approved)  
Properties highlighted in green (properties where sanitary protection areas have been encroached by buildings)*
- D – Letter dated July 1 2012 from JoDee Marlatt, owner of Lot 41 regarding unintended consequences.*
- E – Email from James Rivard to Dan Valoff regarding restrictive covenants and request that variance be denied*
- F – Email from Holly Duncan of Kittitas County Public Health Department regarding Kittitas County's reliance upon the WAC standards for building within 100' sanitary circles.*
- G – Email from Danielle Russell of the Washington State Department of Health to Appellants regarding process for approval of wellhead variance requests*
- H – Letter from Kittitas County Planning Department to Attorney Dohn regarding “grandfather” of zoning due as part of Kittitas County Growth Management Act.*



Kittitas County Office Of The Treasurer  
Deanna Jo Panattoni, Treasurer  
205 W 5th Avenue, Suite 102  
Ellensburg, Wa 98926  
Phone (509) 962-7535 Fax (509) 933-8212

Cash Receipts

Receipt Number: 2012-4614 Date: 07/02/2012

Received From: BOCC-DEBBIEM-DEBBIE

Check Amount: \$0.00

Cash Amount: \$500.00

Eft Amount: \$0.00

Total Amount: \$500.00

Deputy: MCKENZIEM Receipt Type: CASH

Template:

Comments:

2012-3178 RECEIVED FROM LYNN BREWER \$500 FOR ZONING SETBACK VARIANCE

<u>FundCode</u>	<u>GlCode</u>	<u>Description</u>	<u>Amount</u>
001	1634589	APPEALS FEE	\$500.00
Total Amount:			\$500.00

Kittitas County Treasurer's Office

Submitted By: MCKENZIE MORSE