

KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
RZ-08-12 & LP-08-33)	LAW, DECISION AND
Akehurst Rezone & Preliminary Plat)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on June 25, 2009, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Don and Gregory Akehurst, landowners, have submitted an application for a rezone from Agriculture-20 to Agriculture-5 along with a 14-lot Preliminary Plat to subdivide three existing parcels totaling 71.29 acres into 14-lots. The proposed lots range in size from 5.00 acres to 8.06 acres. The project is proposed to be served by individual wells and individual on-site septic system. The project is proposed to be served by individual wells and individual on-site septic systems. (Staff Report)
2. The applicants are Don Akehurst and Gregory Akehurst, 2151 Brick Mill Road, Ellensburg, WA 98926. (Application Materials)
3. The property is located east of Wilson Creek Road, west of Naneum Road, south of Lone Willow Lane off of the north side of Brickmill Road, Ellensburg, WA 98926, in a portion of Section 20, T18N, R19E, WM, in Kittitas County. Assessor's map numbers 18-19-20020-0006, 18-19-20020-0013, 18-19-20054-0001 and 18-19-20054-0001. (Staff Report)

4. Site Information:
- | | |
|--------------------------|-------------------------------------|
| Total Project Size: | 71.29 acres |
| Number of Lots: | 14 |
| Existing zoning district | Agriculture-20 |
| Proposed zoning district | Agriculture-5 |
| Domestic Water: | Individual wells |
| Sewage Disposal: | Individual on-site septic |
| Power/Electricity: | Puget Sound Energy |
| Fire Protection: | Kittitas County Fire District #2 |
| Irrigation District: | Kittitas Reclamation District (KRD) |
- (Staff Report)
5. Site Characteristics: The area is forested and relatively flat where no slopes are in excess of 25%. (Staff Report)
6. Surrounding Property:
- | | |
|---------------|-------------------------|
| <u>North:</u> | Agriculture |
| <u>South:</u> | Residential |
| <u>East:</u> | Agriculture |
| <u>West:</u> | Residential/Agriculture |
- (Staff Report)
7. The Comprehensive Plan designation is Rural. (Staff Report)
8. The subject property is zoned Agriculture-20, which allows for a 20 acre minimum lot size. (Staff Report)
9. Application for a rezone from Agriculture-20 to Agriculture-5 was received on December 17, 2008. The application was deemed complete on January 20, 2009. A Notice of Application was issued on February 3, 2009. Said notice was mailed to all neighbors within 500 feet and to interested state agencies. (Staff Report)
10. In accordance with Kittitas County code 15A.030.110, this project was accurately posted with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was signed by the applicant and returned to the planner on January 29, 2009. (Staff Report)
11. Kittitas County issued a Determination of Nonsignificance (DNS) on June 5, 2009 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff Report)
12. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. The proposed subdivision will be adequately served by rural

- levels of service. The lots will be served by the Individual wells, and individual on-site septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on site. (Staff Report)
13. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats. (Staff Report)
 14. The Kittitas County Department of Public Works has conditioned the project and the conditions are included as part of the record. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff Report)
 15. The following agencies provided comments during the comment period: Department of Ecology, Department of Community, Trade & Economic Development, Washington Department of Health, Kittitas County Fire Marshal's Office, Kittitas County Public Health, and Kittitas County Public Works. These comments have been included as conditions of approval to address the agency concerns. (Staff Report)
 16. A surrounding landowner submitted comments during the comment period and these comments have been included as an exhibit in the Hearing Examiner packet and were considered in making the SEPA threshold determination. (Staff Report)
 17. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. (Hearing Examiner finding based on the record)
 18. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
 19. The Kittitas County Community Development Services recommended approval of this permit(s), subject to the recommended conditions of approval. (Public hearing record)
 20. Public hearing after due legal notice was held on June 25, 2009. Appearing and testifying on behalf of the applicant was Wayne Nelson of Encompass Engineering & Surveying. Mr. Nelson testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Nelson indicated that all of the proposed findings of fact and conditions of approval were acceptable to the applicant. (Open record public hearing testimony)
 21. Also testifying on behalf of the applicant was Mr. Don Akehurst. Mr. Akehurst indicated that all of the proposed additional conditions contained within the comment letter from Barry Callaway received February 11, 2009, were acceptable to him. These included restrictions on the type of homes that would be allowed on the

- property, that being stick-built homes allowed and no modular or trailer homes allowed. Additionally, that there would be individual wells, septic, restrictive covenants, piped irrigation and consistent fencing around the perimeter property as well as a bridal path for owners of the lots within the subject property along the perimeter of the property. (Open record public hearing testimony)
22. No member of the public testified at the hearing. (Application materials)
 23. The proposed amendment is compatible with the Comprehensive Plan because the Comprehensive Plan encourages a mixture of land uses and densities as well as diversified economic developments which provides broader economic opportunities. (Application materials)
 24. The proposed amendment bears a substantial relation to the public health, safety or welfare because the proposed rezone and preliminary plat will allow the creation of smaller, more valuable parcels within Kittitas County resulting in additional revenues to support County services, schools and fire districts. (Application materials)
 25. The proposed amendment has merit and value for Kittitas County or a sub-area of the County by taking pressure off of and preserving agricultural and forestry lands in the area. Further, the subject property has not been designated as agricultural lands of long-term commercial significance. (Application materials)
 26. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property because parcels within the vicinity of the subject property are sized consistent with this proposed rezone and preliminary plat. In addition, given the current pattern of development in the area, the subject property would be better served in smaller, residential lots. (Application materials)
 27. The subject property is suitable for development in general conformance with the zoning standards for the proposed zone because the proposed land use is consistent with the surrounding land uses and the proposed zone is consistent with the Comprehensive Plan and therefore, according to the Kittitas County Prosecuting Attorney, the request is not an “island or spot” rezone. (Application materials)
 28. The proposed amendment will not be materially detrimental to the use of properties to the immediate vicinity of the subject property because there has been no objection by adjoining property owners as to this proposed use, so long as certain conditions are met. (Application materials)

29. The proposed changes in use of the subject property will not adversely impact irrigation water deliveries to other properties because the applicant will cooperate with the Kittitas Reclamation District for an approved water distribution plan agreeable to Kittitas County and the KRD Board of Directors. (Application materials)
30. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located. (Hearing Examiner finding based on the record)
31. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Hearing Examiner finding based on the record)
32. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding based on the record)
33. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding based on the record)

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interest will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Kittitas County Code Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.

7. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
8. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
9. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.
10. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application RZ-08-12 & LP-08-33, Akehurst Rezone & Preliminary Plat, be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

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

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials which were deemed complete on December 17, 2008 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. All current and future landowners must comply with the International Fire Code and its Appendices.
5. It is the responsibility of the applicant to contact the Kittitas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.

6. Soil logs need to be scheduled and dug at a mutually convenient time. The developer/owner shall provide soil logs as per Chapter 246-272 WAC or as amended. The information obtained will be recorded and placed in the plat file for future reference. The information obtained from these soil logs is for plat approval purposes only and does not constitute a site evaluation in conjunction with the issuance of a permit for any specific lot.
7. Proof of potable water must be shown prior to final plat approval.
8. For final approval of an individual well, the submittal of well logs or a hydrogeological report with documentation/evidence to support the claim regarding adequate availability of groundwater for the proposed number of potable water wells is required. This report shall be submitted by a Professional Engineer who practices in the field of hydrology or by a licensed Hydrogeologist.
9. All applicants for subdivision utilizing wells shall have a note placed on the face of the final mylars that states: “
 - a. *“Metering will be required on all new residential well connections and metering results shall be recorded in a manner consistent with Kittitas County and Washington State Department of Ecology requirements.”*
10. The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code; including content, format, etc. The following items will be required on the Final Plat Submittal:
 - a. Adjacent Property Owners: The adjacent property owners and surrounding properties shall be on the face of the final short plat. (K.C.C.16.20.040, 10, Plat drawing, Adjacent Owners).
 - b. Surrounding Area: All surrounding property shall be shown in dotted lines and letters with names of plats, roads, adjoining lots, canals, and etc., and if un-platted shall be so indicated. (K.C.C.16.20.040, 11, Plat drawing, Surrounding Area).
11. Private roads serving any of the lots within this development shall be inspected and certified by a licensed professional engineer for conformance with current Kittitas County Road Standards, 9/6/05 edition. Kittitas County Public Works shall require this road certification to be completed or improvements bonded for prior to the issuance of a building permit for any of the structures within the proposed plat.
12. Access from Brickmill Road to the cul-de-sac shall be constructed to meet or exceed the conditions of a Low-Density Private Road. See Kittitas County Road Standards, 9/6/05 edition.

- a. Access easements shall be a minimum of 60' wide. The roadway shall have a minimum width of 20', with 1' shoulders, for a total width of 22'.
 - b. Minimum centerline radius will be 60'.
 - c. The surface requirement is for a minimum gravel surface depth of 6".
 - d. Maximum grade is 12%.
 - e. Stopping site distance, reference AASHTO.
 - f. Entering site distance, reference AASHTO.
 - g. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - h. Any further subdivision or lots to be served by proposed access may result in further access requirements.
 - i. All roads located within this development or roads that provide access to this development shall be constructed to current county road standards unless any other maintenance agreements, forest service road easements or state easements require higher road standards. The higher of the road standards shall apply.
 - j. All easements shall provide for AASHTO radius at the intersection of county road.
 - k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road right of way.
13. A cul-de-sac turn-around having an outside right-of-way or easement diameter of at least 110 feet shall be constructed at the closed end of all dead-end roads serving 3 or more lots. The driving surface shall be at least 96 feet in diameter. Cul-de-sacs must also conform to the requirements specified by the 2006 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
14. Access to Lots 1-11 is allowed in the proposed location by Road Variance 08-12. Access to Lot 12 shall be a single-use driveway in the existing location. Access to Lots 13 and 14 shall be a joint-use driveway in the existing location.
15. A joint-use access shall serve no more than two tax parcels. See Kittitas County Road Standards, 9/6/05 edition.
 - a. Access easements shall be a minimum of 20' wide. The roadway width shall have a minimum width of 12'.
 - b. The surface requirement is for a minimum gravel surface depth of 6".
 - c. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - d. Any further subdivision or lots to be served by proposed access may result in further access requirements.
16. A single-use access shall serve no more than one lot. See Kittitas County Road Standards, 9/6/05 edition.

- a. The roadway shall be a minimum of 8' wide with gravel surface.
 - b. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - c. Any further subdivision or lots to be served by proposed access may result in further access requirements.
17. The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
18. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
19. An approved access permit shall be required from the Department of Public Works prior to creating any new driveway access or performing work within the county road right of way.
20. Contact the Kittitas County Rural Addressing Coordinator at (509) 962-7523 to obtain addresses prior to obtaining a building permit. A parcel cannot receive a building permit or utilities until such parcel is identified with a 911 address.
21. Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
22. The U.S. Postal Service requires that private roads with 6 or more residences install USPS approved Cluster Box Units (CBUs) at a safe location at the mouth of the private road. Contact your local Post Office for location and additional design requirements before beginning construction.
23. Private roads shall meet the following conditions:
 - a. Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
 - b. Shall be designed and constructed in conformance with AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT < 400) 2001, as now exists or hereafter amended, and
 - c. Shall be inspected and certified by a licensed professional engineer for conformance with the above referenced standards. In the alternative, an applicant may request the private roadway to be inspected and subject to the approval of the Public Works Director. If certification by the public Works Director/County Engineer is desired, submission of road plans and necessary testing documentation that confirms compliance with Kittitas County Road Standards is required, and services will be performed on a reimbursable basis, and

- d. Permanently established by an easement recorded with the Kittitas County Auditor or right-of-way, providing legal access to each affected lot, dwelling unit, or business, and
 - e. Will not result in land locking of existing or proposed parcels, and
 - f. Maintained by the developer or legally responsible owner or homeowners' association or other legal entity made up of all benefited property owners, under the provisions of an acceptable and recorded "Private Road Maintenance Agreement", and
 - g. Clearly described on the face of the plat, short plat, or other development authorization and clearly signed at street location as a private street or road, for the maintenance of which Kittitas County is not responsible and a disclosure statement of the same is filed with the County Auditor, and
 - h. The following note shall be placed on the face of the plat, short plat, or other development authorization:
"Kittitas County will not accept private roads for maintenance as public streets or roads until such streets or roads are brought into conformance with current County Road Standards. This requirement will include the hard surface paving of any street or road surfaced originally with gravel."
24. A plat note discussing the spread of noxious weeds shall be shown on the plat and shall read: "Per RCW 17.10.140 Landowners are responsible for controlling and preventing the spread of noxious weeds, accordingly, the Kittitas County Noxious Weed Board recommends immediate reseedling of areas disturbed by development to preclude the proliferation of noxious weeds."
25. Final mylars shall be submitted in accordance to KCC 16.20: Final Plats. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
26. Both sheets shall reflect the Plat number: LP-08-00033.
27. The subject properties will only have stick-built homes, and fences along the perimeter of the property will be of same design and character. There will be no modular or trailer homes allowed within the development. A note on the final plat shall indicate these restrictions with language agreeable to the Kittitas County Prosecuting Attorney.

Dated this 8th day of July, 2009.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp