

JAN 26 2022

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

## SHORELINE MANAGEMENT PERMIT

## ACTION SHEET

**Application #:** AA 2021-459

**Administering Agency** Chelan County Department of Community Development

**Background:** ■ Appeal of Administrative Denial of SDP

**Hearing Examiner Action:** ■ Affirmed Denial

**Date of Action:** January 25, 2022

**Date Mailed to DOE/AG**

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of Chelan County, the denial of Shoreline Substantial Development Permit SDP 21-109 is hereby AFFIRMED.

**I. FINDINGS OF FACT**

1. An application for an Administrative Appeal with fees was submitted to appeal the denial of a shoreline substantial development permit (SDP 21-109). The shoreline substantial development permit proposed to construct a joint-use pier, install a boatlift and 2 mooring buoys, and assembly of shoreline access stairs within shoreline jurisdiction. The shoreline permit was administratively denied because the joint use dock was to be owned by a waterfront property owner and a non-waterfront property owner. The appeal was submitted on the basis that the agent believes the Chelan County Shoreline Master Plan (CCSMP) does not limit joint-use docks to only waterfront properties and the CCSMP has not adopted the Department of Ecology Shoreline Master Program Handbook.
2. The Appellants/owners are Glen and Patricia Bowser and Carl Peterson and their agent is Clay Gatens.
3. The subject property is located at NNA Greens Landing Rd, Manson, WA 98831. The tax parcel number is 28-21-15-200-051 and the legal description is Parcel F of BLA 2020-001, AFN 2522467.
4. The zoning district is Commercial Agricultural (AC).
5. Existing Land Use and Site History: A 3-lot boundary line amendment (BLA 2019-062) was recorded on September 25, 2019. A 4-lot boundary line amendment (BLA 2019-070) was recorded on October 22, 2019. A Certificate of Exemption (COE 2019-020) was recorded on December 4, 2019. A shoreline substantial development permit (SDP 2021-109) was submitted on March 18, 2021. Denial of the SDP was issued on September 23, 2021.

6. On October 6, 2021, the administrative appeal (2021-459) was filed with Chelan County Community Development with the associated application fees appealing the SDP 21-109 permit denial.
7. The Notice of Public Hearing was issued on January 8, 2022.
8. On March 18, 2021, the appellants applied for a Shoreline Substantial Development Permit (SDP) for the construction of a joint-use pier, installation of a boatlift and 2 mooring buoys, and assembly of a shoreline access stairs within the shoreline jurisdiction of Lake Chelan.
9. The administrator determined that the proposed development would not be consistent with the Chelan County Shoreline Master Program (CCSMP) Goals and Objectives; CCSMP Section 5.14 Private Moorage Facilities and CCSMP Section 7.5.2 Shoreline Substantial Development Permits, Permit Review Criteria, and denied the permit.
10. The scope to the proposal involves a joint use dock that serves two properties, one property abuts the shoreline and the second property does not abut the shoreline.
11. Pursuant to CCSMP Section 7.13.1, administrative review decisions by the Shoreline Administrator may be the subject of an appeal to the Hearing Examiner by any aggrieved person. Such appeals shall be an open record hearing before the Hearing Examiner. Appeals shall comply with CCSMP Section 7.13.1.B. The Hearing Examiner decision may be appealed to the Shoreline Hearing Board, per CCSMP Section 7.13.2, within 21 calendar days of filing of the final decision by Ecology as provided for in RCW 90.58.140(6).
12. On March 18, 2021, a request for an SDP was submitted.
  - 12.1 The application proposed:
    - 12.1.1 The joint use pier would be in a 'dog leg' shape and have 366 sq. ft. of overwater coverage.
    - 12.1.2 The boatlift would have a maximum footprint of 125 sq. ft. and lie approximately 31 ft. of the OHWM at a water depth of approximately 6-8 ft.
    - 12.1.3 The two mooring buoys would be anchored located approximately 95 ft. waterward of the OHWM at a water depth of approximately 18 ft.
    - 12.1.4 The shoreline access stairs would be installed to provide access to the proposed joint use pier. The stairs would use grated treads and attached to multiple 20 sq. ft. concrete landings for foundational purposes.
  - 12.2 The proposed dock is designated to be joint-use between parcel nos. 28-21-15-200-051 (waterfront) and 28-21-15-130-051 (not waterfront).
13. On September 23, 2021, the SDP denial was issued by the Chelan County Assistant Director.
  - 13.1 The subject waterfront property is a legal lot of record, created by boundary line adjustment 2020-001 under AFN 2520592 dated July 23, 2020.
  - 13.2 During planning review, it was determined that the CCSMP Section 5.14 would not allow approval of a joint use dock in this instance because both properties are not waterfront.
  - 13.3 The CCSMP Section 5.14B.1 requires joint-use if moorage is to be provided as part of residential development of two or more waterfront dwelling units or lots or is part of a subdivision created after May 3, 1994. The subject properties do **not** meet these parameters.

- 13.4 The intent of the joint-use dock requirement is to minimize the impact of private moorage facilities, by reducing the number of allowable single-use and joint-use docks. The proposed joint-use dock is contrary to this intent of minimizing impacts and a single use dock would not be allowed because the lot was created after May 3, 1994.
  - 13.4.1 CCSMP Table 5.14-a allows joint-use docks on Lake Chelan to be much larger (450 sf) than a single-use docks (320 sf).
- 13.5 The State of Washington Department of Ecology Shoreline Master Program Handbook (Publication Number: 11-06-010) includes Chapter 12: Piers, Docks and Overwater Structures, which states, "The SMP Guidelines state that master programs should include provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities. The purpose of joint use docks is to reduce the proliferation of piers and docks. A joint use dock should be shared by shoreline property owners, not a shoreline owner and an upland owner."
14. There is similar appeal (AA 21-458) for a joint use dock on parcel no. 28-21-15-200-052 (waterfront) directly adjacent to the subject properties. The similar appeal also has an associated parcel no. 28-21-12-130-052 that is not waterfront.
15. On October 6, 2021, an appeal of the denial of SDP 21-108 was submitted by Clay Gatens of Gatens, Green, and Weidenbach, PLLC, the agent acting on behalf of the appellant.
16. The appellant is seeking that the SDP decision be reversed to allow for construction of a joint use pier, installation of a boatlift and two mooring buoys and the assembly of shoreline access stairs within the shoreline jurisdiction of Lake Chelan.
17. Chelan County Shoreline Master Program Section 7.13.1: Appeals of Shoreline Administrator Determinations and Decisions:
  - 17.1 Administrative review decisions and exemption letters by the Shoreline Administrator may be the subject of an appeal to the Hearing Examiner by any aggrieved person. Such appeals shall be an open record hearing before the Hearing Examiner.
  - 17.2 Appeals must be submitted within ten working days after the date of decision or written interpretation together with the applicable appeal fee. Appeals submitted by the applicant or aggrieved person shall contain:
    - 17.2.1 The decision or interpretation being appealed, including the file number reference and the specific objections in the decision document;
    - 17.2.2 The name and address of the appellant and interest(s) in the application or proposed development;
    - 17.2.3 The specific reasons why the appellant believes the decision or interpretation to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision or interpretation is erroneous;
    - 17.2.4 The specific relief sought by the appellant; and
    - 17.2.5 The appeal fee established by the County.
  - 17.3 The Appellants' have met all of these appeal criteria.
18. Chelan County Shoreline Master Program Section 7.13.2: Appeals to Shorelines Hearings Board:

- 18.1 Appeals to the Shorelines Hearings Board of a final decision on a Shoreline Conditional Use Permit, Shoreline Variance, or a decision on an appeal of a Shoreline Master Program administrative action already appealed to the County Hearing Examiner, may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within 21 calendar days of filing of the final decision by Ecology as provided for in RCW 90.58.140(6).
19. After due legal notice, an open record public hearing was held via Zoom video conference on January 19, 2022.
20. Admitted into the record were the following documents:
  - 20.1 Ex. 1: AA 2021-459 Application Materials.
  - 20.2 Ex. 2: SDP 21-109 Bowser Denial Decision.
  - 20.3 Ex. 3: January 18, 2022 Declaration of Dan Beardslee with Exhibit A.
  - 20.4 Ex. 4: The entire Planning staff file of record.
21. The Appellants' position is basically that the Chelan County Shoreline Master Program, which has been recently updated, does not expressly prohibit joint use docks to be owned by waterfront property owners and non-waterfront property owners.
22. The Appellants' position is that the State of Washington Department of Ecology Shoreline Master Program handbook (hereinafter "handbook") has not been incorporated within the Chelan County Shoreline Master Program as specific rules required to be followed.
23. The Hearing Examiner would note that the handbook does not, by its express language, prohibit joint use docks to be shared by shoreline property owners and non-shoreline property owners, but only that "a joint use dock **should** be shared by shoreline property owners, not a shoreline owner and an upland owner". (Emphasis provided).
24. Chelan County Shoreline Master Program and Comprehensive Plan have shared goals to limit dock proliferation on Lake Chelan and other waterfront properties within the County. Accordingly, joint use docks are encouraged, and in some circumstances, outright required.
25. The Appellant, as well as the County, are correct that the current Chelan County Shoreline Master Program (CCSMP) to which this application vested, requires joint use dock facilities for two or more waterfront dwelling units or lots in specific circumstances.
26. The Appellant then goes further to say because this provision does not prohibit non-waterfront lots from being co-owners of a joint use dock. Therefore, non-waterfront lots may be co-owners with a waterfront lot owner of a joint use dock.
27. The Appellants' position is not consistent the intent of the Washington State Shoreline Management Act or the CCSMP. The Appellants' position would allow non-waterfront property owners located anywhere throughout the County, anywhere throughout the State of Washington, or even anywhere throughout the United States, to be co-owners of a joint use dock within Chelan County. This is not consistent with clear intent of the CCSMP. Appellants' interpretation would lead to this absurd result.
28. The Hearing Examiner would also note that the CCSMP would not allow a waterfront property owner of a waterfront lot on, for example, Lake Washington, to combine with a waterfront property owner on property located on Lake Chelan to have a joint use dock in Chelan County.
29. The Hearing Examiner recognizes that private property owners can make private agreements, so long as consistent with state and local laws, rules and regulations.

30. The Hearing Examiner adopts the rationale found in paragraph 19 of the Administrator's Decision Denying SDP 21-109 dated September 23, 2021.
31. While the Hearing Examiner certainly is bound to interpret codes by their clear language, the Hearing Examiner is also not required to render interpretations that would result in unintended or, in this case, absurd results.
32. The Hearing Examiner cannot find, by a preponderance of evidence, that the CCSMP was intended, in this circumstance, to allow non-waterfront property to be included in ownership of a joint use dock.
33. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. The Applicant has the burden of proof to show that the application complies with all laws, rules, and regulations.
3. The proposed development would not be consistent with the Chelan County Shoreline Master Program (CCSMP) Goals and Objectives; CCSMP Section 5.14 Private Moorage Facilities and CCSMP Section 7.5.2 Shoreline Substantial Development Permits, Permit Review Criteria.
4. CCSMP Section 5.14 would not allow approval of a joint use dock in this instance because both properties are not waterfront.
5. The CCSMP Section 5.14B.1 requires joint-use if moorage is to be provided as part of residential development of two or more waterfront dwelling units or lots or is part of a subdivision created after May 3, 1994. The subject properties do not meet these parameters.
6. The intent of the joint-use dock requirement is to minimize the impact of private moorage facilities, by reducing the number of allowable single-use and joint-use docks. The proposed joint-use dock is contrary to this intent of minimizing impacts and a single use dock would not be allowed because the lot was created after May 3, 1994.
7. The Appellants' position is contrary to the Shoreline Management Act and the CCSMP.
8. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Hearing Examiner finds that the denial of SDP 21-109 is **AFFIRMED**.

Dated this 25 day of January, 2022.

CHELAN COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp

**Anyone aggrieved by this decision has twenty-one (21) days from the “date of receipt” as defined by Washington Law to file a petition for review with the Shorelines Hearings Board (for the shoreline permit and two shoreline conditional use permits) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.**

**Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.**

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.

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**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A  
CONDITIONAL USE AND/OR VARIANCE PERMIT**

Date received by the Department \_\_\_\_\_

Approved \_\_\_\_\_

Denied \_\_\_\_\_

This conditional use/variance permit is approved / denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

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