



CHELAN COUNTY HEARING EXAMINER

Chelan County Administration Building, Room 1,
400 Douglas Street, Wenatchee, WA 98801

March 20, 2019, 1:00 am

Chelan County Hearing Examiner: Andrew Kottkamp

Chelan County Staff: Planning Manager – Kirsten Larsen, Planner – Emily Morgan, Planner – Jamie Strother, Permit Clerk - Wendy Lane, Office Manager – Lynn Machado

Public/Agencies: Judy Clark, Scott Springate, Herb Gardner, Anne Hessburg, Clay Gatens

AGENDA:

I. CALL TO ORDER

[1:00:04 PM](#) Hearing Examiner Kottkamp called the Hearing to order. No objections were given to Mr. Kottkamp running today's hearing. Instruction was given to attendees on how the hearing is conducted and how to participate, testify, and appeal a decision.

II. PUBLIC HEARINGS

SDP 2018-398/SCUP 2018-399/SCUP 2018-400: Application for a shoreline substantial development permit and shoreline conditional use permits was submitted by Grette Associates, LLC (agent), on behalf of Clifford Webster (owner) on November 19, 2018 and deemed complete on December 4, 2018; for the removal of two existing anchoring chains on an existing dock and installation of five (5) 8-inch piles; installation of a new 10 ft x 12.5 ft boatlift; and placement of a new 24-inch diameter mooring buoy. The size of the existing dock will not change, and the gangway will continue to be removed during high water. The boatlift will be installed on the downlake side of the existing dock, approximately 47 feet waterward of the OHWM at a water depth of approx. 5-8 feet. The buoy will be located approximately 110 feet waterward of the OHWM at a water depth of 18 feet. The subject property is located at 16050 Cedar Brae Rd, Leavenworth, WA 98826, within the Rural Waterfront (RW) zoning district and the 'conservancy' shoreline environment designation for Lake Wenatchee, a shoreline of statewide significance; further identified by Assessor's Parcel No.: 271730511245. The application includes a JARPA and SEPA Checklist. Other permits required include a residential building permit and WDFW HPA. **Planner: Emily Morgan**

[1:04:57 PM](#) Mr. Kottkamp discussed the application details, and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Emily Morgan explained the application. Staff recommends approval.

[1:07:02 PM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She has reviewed the staff-report and conditions of approval and finds them acceptable.

[1:07:56 PM](#) With no public present, Mr. Kottkamp closed the public portion of the record on the matter.

SDP 2018-370/SCUP 2018-371/SCUP 218-372: Application for a shoreline substantial development permit and shoreline conditional use permits, were submitted by Grette Associates, LLC (agent) on behalf of

William Hayward (owner); for repair and maintenance of an existing 316 square foot pier and installation of a 125 square foot boatlift and one 24-inch diameter buoy on Lake Chelan. The pier maintenance includes replacement of wood decking with composite decking, replacement of existing batter boards and the installation of structural cross bracing to increase pier rigidity; the pier footprint will remain the same. The boatlift will be installed on the landward side of the existing pier, approximately 12 feet from the OHWM at a water depth of approximately 10 feet. The proposed buoy will be located approximately 40 feet from OHWM on state-owned aquatic lands. The subject property is located at 21734 S Lakeshore Rd, Chelan, WA 98816, within the Rural Waterfront (RW) zoning district and the 'rural' shoreline environment designation for Lake Chelan, a shoreline of statewide significance; further identified by Assessor's Parcel No: 292024820035. **Planner: Jamie Strother**

[1:08:08 PM](#) Mr. Kottkamp discussed the application details, and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends approval.

[1:10:00 PM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She has reviewed the staff-report and conditions of approval and finds them acceptable.

[1:10:49 PM](#) With no public present, Kottkamp closed the public portion of the record on the matter.

SDP 2018-388/SCUP 2018-389/SCUP 2018-390: Application for a shoreline substantial development permit and shoreline conditional use permits was submitted by Grette Associates, LLC (agent), on behalf of Lee and Stacy Sandquist (owners) on November 13, 2018 and deemed complete on December 4, 2018; for installation of a new 10 ft x 12.5 ft boatlift and one 24-inch diameter mooring buoy on Lake Chelan. The boatlift will be installed on the downlake side of the existing pier, approximately 24 feet waterward of the OHWM at a water depth of approximately 8-10 feet. The buoy will be located approximately 55 feet from the OHWM at a water depth of 18 feet. The subject property is located at 15884 S Lakeshore Rd, Chelan, within the Rural Waterfront (RW) zoning district and the 'rural' shoreline environment designation for Lake Chelan, a shoreline of statewide significance; further identified by Assessor's Parcel No.: 282104310100. The application includes a JARPA and SEPA Checklist. Additional permits required include a residential building permit, USACE Section 10, WDFW HPA and CCPUD License. **Planner: Jamie Strother**

[1:11:03 PM](#) Mr. Kottkamp discussed the application details, and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends approval.

[1:12:50 PM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She has reviewed the staff-report and conditions of approval and finds them acceptable.

[1:13:23 PM](#) With no public present, Kottkamp closed the public portion of the record on the matter.

SDP 2018-263 and SCUP 2018-264, -265 and -266 : Proposed Project Description: An application for a Shoreline Substantial Development Permit and three Shoreline Conditional Use Permits to remove an existing pier, construct a new pier, replace existing shoreline stabilization, and place a boatlift, buoy and swimfloat. The subject property is within the within the Rural Waterfront (RW) zoning district and the 'rural' shoreline environmental designation. Project Location: 1284 S Lakeshore Rd, Chelan, WA 98816; and identified by Assessor's Parcel No.: 27-22-08-705-136. **Planner: Jamie Strother**

[1:13:32 PM](#) Mr. Kottkamp discussed the application details, and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends approval.

[1:14:23 PM](#) This Application was a continued Application from the Hearing Examiner's Meeting on March 6, 2019. The record had been opened to allow a member of the public to testify.

[1:16:17 PM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She wanted to address an error, found on page 6, of the staff-report, under part B, concerning the fact statement. She explained that the Dept. of Natural Resources does not have jurisdiction over this matter on the depth requirement. The land is on private property and above the requirement depth of 21 feet, so, as a result, the Dept. of Natural Resources has no authority on this matter. As a result, she would like Recommended Condition of Approval 1.2, in the staff-report, to be removed. Anne Hessburg found the other terms on conditions to be acceptable.

[1:19:09 PM](#) Planner Jamie Strother stated that the Dept. of Natural Resources does not need to be permitted if not on Dept. of Natural Resources land or under their jurisdiction.

[1:19:50 PM](#) With no public present, Kottkamp closed the public portion of the record on the matter.

VAR 2018-333/RIPV 2018-334/SV 2018-335: An application for a Front Yard Variance, Riparian Variance and a Shoreline Variance; to reduce the front yard setback to two (2) feet from the front lot line, to reduce the riparian setback to sixteen feet five inches (16'5") from the ordinary high water mark (OHWM) and to reduce the common line setback to sixteen feet five inches (16'5"). The subject property is within the Rural Waterfront (RW) zoning district and the rural shoreline environment designation for Lake Chelan, a shoreline of statewide significance. Project Location: 1284 South Lakeshore Road, Chelan, WA 98816; and identified by Assessor's Parcel No.: 27-22-08-705-136. **Planner: Jamie Strother**

[1:20:00 PM](#) Mr. Kottkamp discussed the application details, stated that this was a continued application from the March 6, 2019, Hearing Examiner's Meeting and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends approval.

[1:22:53 PM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She reviewed staff report and conditions and finds them acceptable.

[1:23:30 PM](#) Anne Hessburg wanted to address concerns about Terry Burnham's comments stated at the March 6, 2019, Hearing Examiner's Meeting. She stated that the lot was, in fact, created in 1908 and not as a result of construction on behalf of surrounding properties. She submitted a Property Search, from the Chelan County Assessor, a two page document, to be marked as Exhibit 1. She stated that Terry Burnham's view would not be hindered due to a change in the setback. She also stated that Mr. Barnham's own shrubs and trees hinder his view. Anne Hessburg stated that Terry Burnham's own photos were not a true example of the problems with his view.

[1:25:48 PM](#) Anne Hessburg stated that the Applicant took into consideration the neighbor's view while planning their construction. A site plan was submitted, marked as Exhibit 2, that shows the view lines taken into account when designing a house for the property. While this was not required per Code, it was done to show that the perspective of the neighbor's view, of the lake, was taken into account while planning this project.

[1:30:39 PM](#) Anne Hessburg stated that the suggestion, made by Terry Barnham, that a 2000 square foot home could be built, on the property, without the variances to be false. She submitted a Decision on a Riparian Variance, from October 2010, that was approved, that shows how a residence and garage would work on the property should the variances be granted. The document was marked as Exhibit 3. She also stated that the Applicant's residence would have a smaller footprint than the 3000 plus square foot houses surrounding the property.

[1:33:04 PM](#) Anne Hessburg also stated that Terry Barnham's comments from, March 6, 2019, indicate that he doesn't believe that the lot is a buildable lot. Ms. Hessburg agrees that the statement would be true if the variances were not granted.

[1:33:47 PM](#) Anne Hessburg stated that a neighboring property also needed three variances to build on that particular property. She submitted a Riparian Variance Decision, from November 2010, showing a front yard and riparian variance. The document was a public record. It was marked Exhibit 3.5.

[1:35:56 PM](#) Ann Hessburg also submitted two pages from the Shoreline Master Program about how the common line setback is calculated on irregular lots. The documents were marked as Exhibit 4. She wanted to show how they got the numbers to use when applying for the variance while keeping in mind the neighbor's view of the lake.

[1:37:39 PM](#) Ms. Hessburg submitted an Arial view of the property, submitted as Exhibit 5. The document supports the applicant belief that they are not asking too much in the way in the variance to construct a residence.

[1:39:09 PM](#) Mr. Kottkamp asked about if the house can be built without a variance. He wanted to know if Anne Hessburg would have any explanation about Mr. Burnham's suggestion that a house could be built on the lot, without a variance. Ms. Hessburg answered that it was pretentious that neighbor should try to dictate how a property owner wants to build on their own property.

[1:41:34 PM](#) Mr. Kottkamp asked when the applicant acquired the property. Ms. Hessburg answered that the property was inherited 2017. Mr. Kottkamp stated that the property owner knew about the irregular shape when she acquired the property.

[1:42:43 PM](#) Mr. Kottkamp asked if the hardship was known, about the property, when the property was acquired. Ms. Hessburg stated that the hardship already existed by the previous owners and by the application of the code. She stated that the hardship has been there for a very long time.

[1:44:43 PM](#) Anne Hessburg submitted her personal notes, to be marked as Exhibit 6, into the public record.

[1:45:17 PM](#) Anne Hessburg did not oppose to any of the conditions of approval listed in the staff-report.

[1:45:53 PM](#) Clay Gatens was sworn in to testify on behalf of Terry Burnham. He restated that Terry Burnham purchased his home because of the view. Mr. Burnham doesn't oppose the front yard variance for the property. Mr. Barnham still feels that a house can be built on the property without variances. Mr. Gatens stated that it is the burden of the applicant to prove that a variance needs to be obtained. He stated that the applicant has not met that burden and there is not hardship in the

matter. Mr. Gatens explained that the neighboring variance, which was granted, had a home that was on a smaller scale and the property shape and footprint was different. So the comparison was not valid. Mr. Gatens stated that granting the variance, on the applicant's property, would grant a special privilege.

[1:53:43 PM](#) Clay Gatens submitted, marked as Exhibit 7, a Property Search regarding the neighboring property, 1300 S Lakeshore Rd, Chelan, Washington.

[1:55:04 PM](#) Clay Gatens also stated that a variance is not to be judgmental of the neighboring properties. The view is a critical component to neighbors in the area. He stated that the Applicant was wanting to max out the corners of the lot to build a structure that shouldn't be built.

[1:57:39 PM](#) Mr. Gatens disputes the statement, in the staff report, on page 9, that once the residence is build, the neighboring properties will not be impaired.

[1:58:20 PM](#) Clay Gatens states that the Hearing Examiner has the authority to make a decision to benefit the neighbors. It is Terry Burnham's position is that the applicant has not met its burden to prove a need for the variances to build on the property. If the variances were granted, it would be a special privilege to the Applicant.

[2:00:48 PM](#) Clay Gatens asked, on Terry Barnham's behalf, for a denial for all three variances. He is also asking to keep the record open for additional information for Terry Barnham and others to present testimony and evidence to support their position.

[2:01:57 PM](#) Mr. Kottkamp was not inclined to keep the record open. He stated that at some point "we have to agree to disagree," or this could be a never ending conflict.

[2:03:24 PM](#) Judy Clark was sworn in to testify. She is a property owner, above the road, looking out over where the applicant wants to build. She approves of the construction of Kathryn Gilliland's house with the variances needed.

[2:05:12 PM](#) Planner Jamie Strother stated that Terry Burnham designed for Kathryn Gilliland's property, and in his design, a front yard variance was required.

[2:06:01 PM](#) Anne Hessburg spoke in responds to Clay Gatens statements. She stated that Terry Burnham's property is approximately 3600 sq. feet. Another neighboring property was approximately 2400 sq. feet. She stated that there are looking for a smaller residence. She believes that the criteria have been met for the variances. She also stated that there was view protection for the neighbors. That, in fact, the proposal does benefit the neighbor's view. The Applicant needs some relief so residential building can occur.

[2:09:55 PM](#) Mr. Kottkamp closed the public portion of the record on the matter.

PLAT 19-003: An application for a Plat has been submitted to divide approximately 20 acres into 4 residential lots and 1 open space tract. The proposed residential lots will range in size from 1.03 to 1.53 acres. The proposed open space tract would be approximately 13.97 acres. The subject property is zoned Residential/Resource Rural – 5 Dwelling Unit per 5 Acres. Project Location: NNA Squilchuck Road, Wenatchee; and identified by Assessor's Parcel No.: 22-20-33-110-100. **Planner: Kirsten Larsen**

[2:10:33 PM](#) Mr. Kottkamp discussed the application details, and entered the staff report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planning Manager Kirsten Larsen explained the application. Staff recommends approval as conditioned.

[2:13:30 PM](#) Planning Manager Kirsten Larsen entered into the record an email, with attachments, on comments to the staff-report. The email is from Michelle Taylor, and marked as Exhibit 1.

[2:14:54 PM](#) Planning Manager Kirsten Larsen wants to address comments in the letter. First is to correct the incorrect reference of Hillcrest to the correct name of Hillcreek. Open space was discussed with a riparian buffer, that would be fenced from the orchard, and the applicant stated that it would be pulled out and replaced. With regard to the Condition of Approval for the geo hazard on page 8 and on the note on page 13, staff recommends that it remains as written. Ms. Larsen also explained that Note 6, on page 13, be removed as Note 5 covers it. Home owner's association was to be established in Note 6 but, but Note 5 defers to management of the cluster. Note 9 doesn't need use the verbiage easement, and Ms. Larsen believes that it doesn't need to be changed.

[2:20:08 PM](#) Planning Manager Kirsten Larsen wants Condition 15 to reflect new the date on the Public Works comments.

[2:21:05 PM](#) Michelle Taylor was sworn in, as an agent, to testify on behalf of the applicant.

[2:21:16 PM](#) Donn Ethenington was also sworn in to testify, as the applicant.

[2:21:34 PM](#) Michelle Taylor addressed an email sent to Planning Manager Kirsten Larsen with regard to the open space. A deer fence is necessary for the owner to use the area for agriculture purposes. The fence is to be replaced. Planning Manager Kirsten Larsen stated that the fence would be outside the riparian buffer. Mr. Kottkamp asked if that would be allowed. Ms. Larsen looked through code to answer the question. It was decided that it would qualify under repair or maintenance to the fence.

[2:24:51 PM](#) With regard to comments from Fire Marshall Bob Plumb and a letter from the PUD, rh2 did a study of the water system. The requirement is 750 gallons per minute; the current system was designed for 500 gallons per minute but can get up to 600 gallons per minute. They would like the Applicant to satisfy 750 gallons per minute, but the system cannot support that.

[2:26:50 PM](#) Mr. Kottkamp stated that the Fire Marshall signed a statement that the goals are satisfied for fire protections. He is not sure what the statement does for the applicant. He also stated that the document was not worded well. Mr. Kottkamp asked for something more up to date, and specific, on the matter.

[2:33:02 PM](#) Donn Ethenington wanted to clarify on the fire flow. He has a chain of emails that were admitted as Exhibit 2. He states that the emails verify that the Fire Marshall oks the 500 gallons per minute with a recommendation of sprinklers in the homes. Mr. Kottkamp asked Mr. Ethenington if he wanted sprinklers in the homes. Mr. Ethenington answered that he did not.

[2:35:46 PM](#) The second issue that Mr. Ethenington wanted to discuss, was the usability of the open space. What can be replanted and what cannot be replanted in the area. He stated that there was a working orchard, on the property, and the trees were above the ordinary high-water mark. The

trees got a virus and the only way to combat it is to remove the trees, remove the infected soil, and then replant new trees over a period of time. He always wanted an agriculture use in the open space.

[2:39:00 PM](#) Planning Manager Kirsten Larsen addressed the Fire Marshall's comments. She stated in Condition of Approval 15, that Applicant shall conform to the comments made by the Fire Marshall in his Agency Comments, dated February 12, 2018.

[2:42:15 PM](#) A public comment was made, with regard to the application, proposed that the area be returned to native plants and/or native wildflowers, to combat noxious weeds, should the orchard be removed in the future.

[2:44:12 PM](#) Mr. Kottkamp stated that the area needed an open space management plan; what to approve or not approve, should the orchard be removed. He stated that he does not have the authority to rewrite it, but to recommend a policy one way or another.

[2:45:48 PM](#) Donn Ethenington believes there is a provision in code to modify an open space management plan. He intend, in the application, to reestablish the orchard.

[2:50:14 PM](#) With no public present, Kottkamp closed the public portion of the record on the matter.

AA 2018-418/CE 2008-006: An Administrative Appeal was submitted by Earl Murdock (applicant) on behalf of the Estate of Maxine Anderson, for a Notice and Order issued on November 14, 2018. The subject property is located at 3800 West Malaga Road, Malaga, WA, with assigned assessor parcel number 22-20-22-310-060 and is within the Rural Village (RV) and Rural Industrial (RI) zoning designations. **Code Enforcement Officer: Angel Hallman**

[1:04:24 PM](#) This application came to a voluntary agreement, which included a withdrawal of the appeal.

III. AJOURNMENT

[2:50:26 PM](#) Hearing Examiner Kottkamp adjourned the March 20, 2019, meeting.