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CHELAN COUNTY
COMMUNITY DEVELOPMENT

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT,
AA 2021-275)	CONCLUSIONS OF LAW AND
Brae Burn Campsites-Longdon)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. This is an Administrative Appeal, appealing the Notice and Order to Abate issued on June 8, 2021 for development including grading, filling, and the installation of concrete pads and electrical boxes in a flood hazard zone without the appropriate permits.
2. The Appellants are Robert C. & Nicole T. Longdon, etal., and their agent is Christian T. Andersen. At the hearing, Mr. Andersen testified that he is currently the owner of all affected parcels.
3. The subject properties were observed as being advertised for recreational camping. The camping sites were previously posted on HipCamp to be used as vacation rentals. The subject properties are currently developed with an existing well and wellhouse and conduit and water lines served by the PUD. The subject properties are located within a floodway and contain a wetland.
4. Property Characteristics and Description: 13865, 13867, 13869, 13871, and 13875 Brae Burn Road, Lake Wenatchee, WA 98826. The legal description is Brae Burn Lot 169, 170, 171, 172, and 173 and it is zoned Rural Residential/Resource 5 (RR5).
5. Application and Public Hearing Notice Compliance:

Stop Work Order issued:	May 27, 2021
Appeal Submitted:	June 22, 2021
Notice of Public Hearing:	October 8, 2021
Public Hearing:	October 20, 2021

6. On May 25, 2021, Mark Stovner reported the possible construction of a 5 or 6 site Recreational Vehicle Park or Campground being developed on the subject properties (CE 21-0015). The reporting party was concerned that construction may have damaged the existing wetland located at the rear edge of the properties located at 13865, 13867, 13869, 13871, and 13875 Brae Burn Road, Lake Wenatchee, WA 98826.
7. On May 25, 2021, Tim Lykken, a Chelan County Sheriff's Office Code Enforcement Officer, visited the subject properties to conduct a site inspection. Mr. Lykken observed that the property had been cleared and leveled, and rectangular pads and electrical boxes had been installed and an outhouse was placed near the wetland. Mr. Lykken spoke with Jeremy Straight from First Choice Electrical, who was installing electrical equipment for a campsite hook-up spot. Mr. Straight stated that the property owners had obtained a Washington State L&I permit to do the electrical work on the properties.
8. On May 27, 2021, Mr. Lykken visited the subject properties to put a Stop Work Order on the development site due to the unpermitted development. Mr. Lykken encountered part owner, Christian T. Andersen, who was using a small skid steer loader to spread and level the crushed rock. Mr. Lykken asked Mr. Andersen if the RV sites were going to be rented out. Mr. Andersen first told Mr. Lykken that they were not intending to rent out any of the RV sites and that they would be used by family and friends. After being shown the HipCamp advertisement for the subject properties, Mr. Andersen said that he was planning on using the RV sites as vacation rentals when the owners, family, or friends were not using the property. Mr. Lykken explained that the owners would be required to obtain a Conditional Use Permit to develop the property and operate it as a campground or RV park. A Stop Work Order was issued for violating Chelan County Code (CCC) Section 11.04.020 District Use Chart and 11.93.330 Recreational Vehicle Park / Campground.
9. On May 28, 2021, Christian Andersen contacted Chelan County Community Development to inquire about the Stop Work Order. Senior Planner Jamie Strother informed Mr. Andersen that all properties in the County were under a Short Term Rental Moratorium and that no Short Term Rentals would be allowed on the subject property. Mr. Andersen stated that the HipCamp listing had been removed. Mr. Andersen was also informed by Ms. Strother that the subject property was located within the floodway and that the County would not be able to permit any development in this area without the appropriate studies and engineering. Strother said that the improvements done to the property would need to be removed and that all ongoing development and improvements to the subject property must cease. The property owner refused to comply.
10. Pursuant to CCC Section 16.06.080, Chelan County Community Development issued a Notice and Order to Abate on June 8, 2021, sent via certified mail to Robert and Nicole Longdon, part owners of the subject properties. Per the USPS website, the Notice and Order to Abate was delivered on June 10, 2021. The Notice and Order was issued for development in a flood hazard area without the proper permitting.
11. On June 15, 2021, Community Development Director Jim Brown received an email from Randy Funke who owns property near the subject properties on Brae Burn Road. Funke stated in his email that another truck load of dirt had been brought onto the site and equipment was brought to spread out the fill dirt over the weekend.

12. On June 15, 2021, Mr. Lykken spoke with Christian Andersen via phone to discuss the FEMA Flood Zone that is located on the subject property. Mr. Lykken stated that there was to be no development in the flood way. Mr. Andersen said that they could have a licensed engineer or hydrologist provide a survey to determine that the improvements would not have a detrimental effect on the flood water elevation. Mr. Lykken suggested that Mr. Andersen have a conversation with Chris Young, the Chelan County Building Official and acting Floodplain Manager. Mr. Lykken also reemphasized that all work on the site was to cease or they could be issued a citation / civil penalty for any work that has not been permitted or approved by Community Development. Later that day, Mr. Andersen sent an email to Community Development Director Jim Brown requesting a phone call or meeting to discuss the requirements in the Notice and Order. The email states that Mr. Andersen and the other property owners were unaware that they needed a Floodplain Development permit to clean up the property, bring in gravel for the entrance and recreational vehicle pads, and to expand the existing PUD power and well water to the sites.
13. On June 16, 2021, Jim Brown replied to Mr. Andersen's email with information regarding the code enforcement process and a reminder that all development must cease immediately. Mr. Andersen submitted a rebuttal to Jim Brown's email reply with more information on the campground and existing development.
14. On June 22, 2021, Christian Andersen submitted an Administrative Appeal (AA 21-275) of the Notice and Order to Abate stating that the Corrective Actions Ordered seem inequitable and punitive. The applicant requests that the Hearing Examiner rescind or modify the Notice to allow preparing and submitting the required permit applications to retain or modify the improvements installed on the property.
15. On September 24, 2021, Christian Andersen submitted a preliminary review for a Floodplain Development Permit to Mark Shexnayder, Chelan County Floodplain Manager. The Permit would likely require a "No-Rise Certification" and engineering to determine that the existing improvements would not have a detrimental effect on the flood water elevation, pursuant to Revised Code of Washington (RCW) 86.16 and Chelan County Code (CCC) Section 3.20. Andersen has not submitted an acceptable and formal Floodplain Development Permit application.
16. Sometime between September 30, 2021 and October 4, 2021, another truck load of fill dirt was brought onto the subject property. The dirt was placed on a tarp and has not been spread. Code Enforcement Officer Tim Lykken posted a second Stop Work Order on the subject property on October 4, 2021. Mr. Lykken spoke to Mr. Andersen via phone on October 5, 2021 and made it clear that no development was allowed on the subject property at this time and that all ongoing work was to cease immediately. Mr. Lykken reemphasized the Stop Work Order via a letter on October 6, 2021.
17. Pursuant to CCC Section 3.20.120, "development" in a flood hazard area is defined as "any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard".

- 17.1 The grading, leveling, and creation of the stone road, recreational vehicle pads and electrical box installation constitutes “development” for which a permit is required under CCC Chapter 3.20.130, Development permit required.
18. The property owners were notified on May 27, 2021 that the campground / recreational vehicle park would require a Conditional Use Permit in order to operate, and on May 28, 2021 of the Short Term Rental Moratorium and restrictions on development in the flood zone. Based on reports from neighbors, and Code Enforcement Officer observation, development has continued on the subject property, with the most recent activity occurring between September 30, 2021 and October 4, 2021.
19. The violations at said properties are detrimental to public health, safety, and welfare, and are declared to be public nuisances pursuant to Chelan County Code, Section 16.02.030.
20. Chelan County Code Section 14.12.010: Administrative appeals.
- 20.1 An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.
- 20.2 The notice of appeal shall contain a concise statement identifying:
- 20.2.1 (A) The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision 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 is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.
21. Based on the application materials, the subject property was cleared and leveled, and the existing power and water services were expanded to the to the new recreational vehicle sites in May of 2021.
22. Pursuant to CCC Section 3.20.120, “development” means “any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage equipment or materials located within the area of special flood hazard”.
- 22.1. Based on Log Notes submitted by Code Enforcement Officer Tim Lykken on May 27, 2021, the subject property appeared to be cleared and leveled, and gravel had been brought onto the site for the creation of a driveway and recreational vehicle pads, which would constitute “development”.
23. On June 15, 2021, a report was submitted by Randy Funke via email to Chelan County Community Development Director Jim Brown, stating that development was continuing on the subject properties.
- 23.1. The property owners were made aware prior to this date that no development was to continue on the subject property without the approval of a Conditional Use Permit for a Minor Recreational Vehicle Park / Campground and appropriate Floodplain Development Permits.

- 23.2. Subsequent to that report, the county communicated via email to Mr. Andersen to cease all further work in the floodplain.
24. Pursuant to CCC Section 3.20.070, a development permit shall be obtained before construction or development begins within any area of special flood hazard established in this chapter. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.
25. Pursuant to CCC Section 3.20.150(12), where development is proposed in a floodway, an engineering analysis demonstrating no rise of the base flood elevation.
26. Pursuant to CCC Section 3.20.300, located within areas of special flood hazard established in Section 3.20.090 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:
- 26.1. (1): No Rise Standard. Prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
27. Pursuant to CCC Section 3.20.330(10), if a development proposal will alter the base flood elevation or boundaries of the special flood hazard area, then the project proponent shall provide the floodplain administrator with engineering documentation and analysis regarding the proposed change. If the change to the base flood elevation or boundaries of the special flood hazard area would normally require a letter of map change, then the project proponent shall initiate, and receive approval of, a conditional letter of map revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR.
28. Per the definition in CCC Section 14.98.1535, 'recreational vehicle park/campground' means any lot or parcel of land upon which two or more recreational vehicles, camp sites, and/or lodge units, as allowed, are located, established, or maintained for occupancy by recreational vehicles as temporary living quarters for recreation or vacation purposes. 'Minor recreational vehicle (RV) parks/campgrounds' means developed campgrounds having fifty or fewer camp or RV sites, cabins and/or lodge units as allowed.
- 28.1. Pursuant to CCC Section 11.04.020, the District Use Chart, 'Recreational Vehicle Park/Campground, Minor' is only an allowable use in the Rural Residential/Resource 5 zoning district with the approval of a Conditional Use Permit.
29. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property contains a mapped wetland. Therefore, the provisions of CCC Section 11.80 Wetlands overlay district do apply.
- 29.1. Pursuant to CCC Section 11.80.020 Regulated activities, the removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind; the dumping of, discharging of, or filling with any material; and the placing of obstructions would require regulation under this section if they occur in a wetland and/or its associated buffer.

- 29.2. Pursuant to CCC Section 11.80.060 Wetland reports, a wetlands report shall be prepared by a qualified professional wetland biologist/consultant when a development activity is proposed in or will impact a wetland or buffer.
30. This is a continuing and repeat violation, with monetary penalties accruing as provided under CCC Section 16.16.010. The violation has continued after the issuance on a Stop Work Order on May 27, 2021 and Notice and Order to Abate on June 8, 2021.
31. After due legal notice, an open record public hearing was held via Zoom video conference on October 20, 2021.
32. Admitted into the record were the entire Planning staff files for AA21-275, and CE 21-0015.
33. Appearing and testifying on behalf of the Appellants were the following individuals:
- 33.1 Christian T. Andersen. Mr. Anderson testified that he was now the current owner of the all the parcels in question. He testified that there are no concrete pads on the property, but that he did bring in gravel. He denied continuing development of the property after the Notice to Stop Work Order had been issued. He stated that he thought it was legal to expand power and that they were providing two RV spots per lot. He testified that there is much development on Brae Burn Road that appears to be in violation of floodway and flood plain regulations. He stated that at this time, they do not intend to develop a campground. He stated that their plan originally was to rent out the RV sites when they were not using the property. He stated that they are not going to rent out the RV sites now. He consistently testified that he just wants to make it “right” with the County.
- 33.2 Mr. Anderson further testified that he said that Ms. Strother told him that it was okay to develop the property so long as they went through the flood permit process. He stated that dirt has been delivered, but has not been spread out on the property. Mr. Andersen generally testified consistent with his written appeal. He testified that they were seeking an “after-the-fact” permit and that they had started this process. He stated that the County was being unreasonable, that there is no rise in the elevation.
34. The Hearing Examiner finds that Mr. Andersen did not submit any competent evidence to deny that he is responsible for the violations alleged by the County in the June 8, 2021 Notice and Order to Abate.
35. Jim Brown, Chelan County Director of Community Development, testified that the Appellant was repeatedly told that no campground would be allowed. He indicated that the Appellant repeatedly stated a lack of willingness to remove improvements. Mr. Brown testified that the first step for the Appellant would be a permit to “undue” the work already completed. That permit would need to comply with the Chelan County Critical Area Ordinance. He stated that the property needed to return to pre-project condition and then the County can consider development permits for the floodway and flood plain. In rebuttal, Mr. Andersen argued that the recreational vehicle spots do not equate to a campground, as they were only going to be used by family and friends and would not be rented. He again stated that he believed he was being treated unfairly because there are other violations of development within the floodway and flood plain on Brae Burn Road that did not obtain appropriate permitting.

36. At no time did the Appellant indicate that they had received proper permitting from Chelan County before beginning their development of the subject properties. Chelan County is not required to issue an “after-the-fact” permit. In this situation, when the Appellant is first required to bring the property back to pre-development condition.
37. No member of the public testified at the hearing.
38. 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 no authority to grant relief in equity, such as in waiver and estoppel.
2. The Hearing Examiner has been granted authority to render this Decision.
3. Pursuant to CCC Section 11.93.330 Recreational Vehicle Park / Campground requires a Conditional Use Permit in order to operate.
4. The grading, leveling, and creation of the stone road, recreational vehicle pads and electrical box installation constitutes “development” for which a permit is required under CCC Chapter 3.20.130, Development permit required.
5. The violations at said properties are detrimental to public health, safety, and welfare, and are declared to be public nuisances pursuant to Chelan County Code, Section 16.02.030.
6. Pursuant to CCC Section 3.20.070, a development permit shall be obtained before construction or development begins within any area of special flood hazard established in this chapter. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.
7. Pursuant to CCC Section 3.20.150(12), where development is proposed in a floodway, an engineering analysis demonstrating no rise of the base flood elevation.
8. Pursuant to CCC Section 3.20.300, located within areas of special flood hazard established in Section 3.20.090 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:
 - 8.1 Pursuant to CCC Section 11.80.020 Regulated activities, the removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind; the dumping of, discharging of, or filling with any material; and the placing of obstructions would require regulation under this section if they occur in a wetland and/or its associated buffer.
9. Pursuant to CCC Section 3.20.330(10), if a development proposal will alter the base flood elevation or boundaries of the special flood hazard area, then the project proponent shall provide the floodplain administrator with engineering documentation and analysis regarding the proposed change.

10. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property contains a mapped wetland Therefore, the provisions of CCC Section 11.80 Wetlands overlay district do apply
13. 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 Notice and Order dated June 8, 2021, and File No. CE 21-0015 rendered by the Chelan County Community Development Director, **IS HEREBY AFFIRMED** in all respects.

Dated this 25 day of October, 2021.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.