WHATCOM COUNTY HEARING EXAMINER

re: ***Administrative Appeal of a Shoreline Exemption Permit*** Janet Wynne, Robert & Susan Kimsey, **Appellants**; Walter Brasken & Mary A. Ruff, **Applicants**; *and* Whatcom County Planning & Development Services, **Administrative Body**.	**APL2023-00001** An Appeal ***of*** SHX2022-00017 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION ON APPLICANTS' MOTION TO DISMISS

SUMMARY OF APPEAL

Issue: Appellants, Janet Wynne, and Robert and Susan Kimsey, are appealing a Shoreline Exemption Decision, dated June 23, 2022, made by Whatcom County Planning and Development for the replacement of a 12x50 float. The Applicants have moved for the appeal to be dismissed on two broad grounds:

1. That the appeal is untimely (§§A, B, and C of Motion[1]); and
2. That the appellants lack standing (§D of Motion).

Appellants argue in response that this Shoreline Exemption Decision was inappropriately issued in the first place as it is "inextricably connected with another permit and SEPA determination" and would constitute A piecemeal decision that deprives Appellants of their due process rights.[2]

Decision: The Motion to Dismiss is granted.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consid-

1 Applicants' Motion for Summary Judgment, *filed* 3/27/23.
2 *See generally* Appellants' Response to Applicants' Motion for Summary Judgment, *filed* 4/3/23.

eration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Appellant(s):	Janet Wynne 1500 Railroad Ave. Bellingham, WA Robert & Susan Kimsey 1500 Railroad Ave. Bellingham, WA
Appellants Agent:	Tim Schermetzler Chmelik Sitkin & Davis 1500 Railroad Ave. Bellingham, WA 98225
Property Owner:	Walter Brasken 615 Pleasant Bay Road Bellingham, WA 98229
Site Location/Address:	615 Pleasant Bay Road Bellingham, WA 98225
Assessor's Parcel Number(s):	370225 219167 0000

Major Authorizing Codes, Policies, Plans, and Programs

- Revised Code of Washington (RCW) 90.58, Shoreline Management Act
- Washington Administrative Code (WAC) 197-11-800(3) – Repair, remodeling and maintenance activities exempt from SEPA review
- Whatcom County Code (WCC) 2.11, Hearing Examiner
- WCC 22.05, Project Permit Procedures
    - .160, Appeals
- WCC 23, Shoreline Management Program
    - .060, Shoreline Permits and Exemptions
- Business Rules of the Whatcom County Hearing Examiner (BRWCHE)

Notice Information:	Mailed Notice of Public Hearing – February 16, 2023 Publication on Website – February 22, 2023
Hearing Date:	April 27, 2023 – 9:00 a.m.

Present at Hearing or Represented by Counsel:

Kyla Walters – Planner
Whatcom County Planning & Development Services

Royce Buckingham – Prosecuting Attorney
Whatcom County

Tim Schermetzler – Appellants' Attorney
Chmelik Sitkin Davis

Dannon Traxler – Applicants Attorney
Langabeer & Traxler

Janet Wynne
Appellant

Robert & Susan Kimsey
Appellant

Walter Brasken
Applicant

Mary A. Ruff
Applicant

Exhibit List:[3]

From SHX2022-00017:

1. Shoreline Exemption Master Land Use Application, *filed* 3/3/22;

2. Applicant's Site Plan, *approved* 6/23/22; and

3. Shoreline statement of exemption, *approved* 6/23/22.

From APL2023-00001:

4. Appeal to the Hearing Examiner of Administrative Official's Decision, *filed* 1/24/23;

5. Appellant's Appeal Statement, *filed* 1/24/23;

3 Some of these exhibits are cumulative and duplicative, with parties submitting the same documents twice or both parties submitting the same documents in different orders. No differentiation was noted in the copies submitted by multiple parties.

6. E-mail of Kyla Walters to Lily Hubbard of 1/5/22 notifying applicant of appeal, *filed* 1/25/23;
7. Invoice documenting Appeal filing fee, *filed* 1/24/23;
8. An E-mail identified as "Response to Kyla Walters email from Lily Hubbard…", dated 12/15/22, and attached preceding e-mail chain;
9. Notice of Decision, *dated* 1/5/23;
10. An E-mail of Kyla Walters to Dannon Traxler of 2/24/23, *filed* 3/6/23, and attached preceding e-mail chain;
11. Letter from Chmelik Sitkin Davis to Kyla Walters and associated exhibits, dated 12/15/23;
12. Applicants Supplemental Exhibit Submission containing Exhibit "D2", *filed* 3/27/23;
13. Appellants Supplemental Exhibit Submission containing Exhibits #A thru #M,[4] *filed* 4/3/23;
14. Declaration of Lillian K. Hubbard, *filed* 4/3/23.

II.

BRWCHE §2.4 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted. Objection was made by the Applicant to all sub-exhibits of the Appellant in Ex. 13, except J, K, L and M for having to do with SHX2022-00017. Noting that they may not have much probative value, but that those exhibits having to do with SHX2022-00017 may be clarifying in answering a question of law about piecemealing, those exhibits along with all others noted herein were admitted into the record.

III.

WCC 2.11.220 allows the Hearing Examiner to issue subpoenas and compel

4 An Exhibit N was missing.

attendance of witnesses at hearings, and no party made such requests. No evidentiary testimony was taken at the hearing.

IV.

The Applicants own real property south of Bellingham in unincorporated Whatcom County, located on Pleasant Bay southwest of Chuckanut Point, at 615 Pleasant Bay Road ("Property").

On or about March 3, 2022, Applicants filed a Shoreline Exemption Application ("Application")[5] to replace a pre-existing float ("Float") extending from the Property.[6] The original float was built in 1956, and replaced in 1990.[7] The 1990 float was destroyed in March 2021 during a severe windstorm, in which forty percent was destroyed after drifting onshore.[8] The Applicants specifically state in the application that "This float is essentially a floating patio deck with means for boat moorage -- nothing more." [9]

Appellants learned of the Application on March 28, 2022, when an email regarding the same was sent from Planning staff to Appellants' attorneys in response to a status inquiry.[10] At that time, Appellants' attorneys requested copies of the Application materials (which were provided to him by Whatcom County Planning and Development Services ("PDS") that same day),[11] and simply asked that he be sent a copy of any decision once it was made.[12] Appellants' attorneys did not formally request that his

5 Ex. 1.
6 *Id*. at 8, 9, and 12.
7 *Id*. at 9.
8 *Id*.
9 *Id*. at 8.
10 Ex. 12, Page 3, email from K.Walters to T.Schermetzler 3/28/2022 1:05 PM.
11 Ex. 12, Page 2, email from K.Walters to T.Schermetzler 3/28/2022 2:15 PM; Page 3, email from T.Schermetzler to K.Walters 3/28/2022 1:49 PM.; *see also* Ex. 12, Page 3-4, email from L.Hubbard to K.Walters 12/14/2022 4: 51 PM.
12 Ex. 12, Page 3, email from T.Schermetzler to K.Walters 3/28/2022 1:49 PM.

clients (or that he, on behalf of the clients) be named as "parties of record." [13]

On June 23, 2022, PDS approved the Applicant's proposed site plan for the project,[14] and issued a determination granting an "Exemption from the Shoreline Management Program Substantial Development Permit Requirement" ("Exemption").[15]

The exemption has 22 conditions associated with it, and most relevant to this hearing are:

> 1. The proposed work shall be consistent with the scope of the application materials provided reviewed by staff and consistent with the site plan stamped "Shoreline Approved" on June 23, 2022. Any changes will require additional review by the Whatcom County Shoreline Administrator.
>
> …
>
> 3. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to any work on the subject property. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit.
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> …
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> 7. The dock shall be anchored to prevent floatation, collapse and lateral movement.
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> …
>
> 9. The proposed dock shall be constructed and maintained so that no part of the dock creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
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> …
>
> 18. The existing dock shall be wholly removed prior to commencing construction of the new dock … [technical details omitted]… [16]

V.

Appellants had not submitted any comment or testimony with regard to the exemption Application prior to the Exemption decision being made.

PDS did not give written or electronic notice of the decision to Appellants'

13 *Id*.
14 Ex. 2.
15 Ex. 3.
16 *Id*.

attorneys at the time of the decision.[17] An attorney for the Appellants emailed inquiring about the status of the Application on December 14, 2022.[18] PDS sent Appellants' attorneys a copy of the Exemption on December 15, 2022.[19] Appellants' attorneys explicitly acknowledged receipt of the Exemption determination in writing on December 15, 2022.[20] PDS declined to rescind the Exemption which the Appellants requested,[21] but did prepare and send out a "Notice of Decision" to the Attorneys for the Appellants on January 5, 2023.[22] That notice stated:

> Planning and Development Services (PDS) is officially issuing you and your clients this notice of a decision made on Shoreline Exemption permit SHX2022-00017, which was approved on June 23, 2022. I note that notice was not initially issued to you at the time of decision. The determination and approved site plan are attached.
>
> Note that pursuant to WCC 23.60.150, a party with standing may be entitled to appeal this decision to the office of the Hearing Examiner. The application for appeal from the Shoreline Administrator's decision may be obtained at the PDS Office or online at... [link omitted]. Such an appeal shall be filed within twenty (20) calendar days of this determination.[23]

Appellants filed an Appeal to the Hearing Examiner of Administrative Official's Decision ("Appeal") on January 24, 2023.[24]

The Appellants are concerned about the state of the Float: "The Float remnant continues to degrade and shed parts into the Bay today. From the beginning, Appellants have been concerned about the Farm[25] and the damage it causes to their property and the Bay generally." Appellants further argued at the hearing that the dock

17 Ex. 10.
18 Ex. 12, Page 3-4, email from L.Hubbard to K.Walters 12/14/2022 4: 51 PM.
19 Ex. 10, Page 1, email from K.Walters to D.Traxler 2/24/2023 3:12 PM.
20 Ex. 11 at 1.
21 *Id*. at 3.
22 Ex. 9.
23 *Id*.
24 Ex. 1.
25 Referring to unpermitted oyster farming

presented both harm and a danger, noting its collapse, movement, and its hazardous conditions including danger from the debris present from the Float's deterioration.

VI.

Simultaneously to much of the above fact pattern, another situation was occurring involving some of the same parties, the float, and PDS. Appellants refer to two other matters associated with the "Farm Application" pending with Whatcom County: a Shoreline Permit Exemption Application SHX2021-00049 and a SEPA determination SEP2021-00047 and an appeal thereof (APL2021-00003) and allege that these matters should be consolidated with the current appeal. Appellants in this matter are appellants along with another party (not named in this matter) in the other matters regarding the Float. Those matters involve one Scott Ruf applying to use the Float in a new manner (oyster farming) in a project called "Pleasant Bay Oyster Company." [26] Scott Ruf is not a property owner, nor does he share any legal identity with the Applicants in this matter. Oyster farming is not a contemplated use proposed in SHX2022-00017.

Since at least 2021, the Appellants have been in communication with PDS regarding unpermitted uses of the float for oyster farming by Scott Ruf and the damage it causes to their property and the adjacent bay, especially in the aftermath of the Float's destruction in March of 2021.[27]

In May 2021, Scott Ruf, after receiving notice of an enforcement action from the County, submitted a shoreline exemption permit application (the "Farm Application") and State Environmental Policy Act ("SEPA") checklist to be retroactively permitted.[28]

26 *See generally* Ex. 13, at Ex. I.
27 *E.g.* Ex. 13 at Ex. F, J, and K.
28 Ex. 13 at Ex. G.

Appellants submitted comments on the Farm Application and SEPA checklist. PDS then issued a SEPA Determination of Nonsignificance (SEP2021-00047).[29] The Appellants in that matter[30] timely appealed the SEPA DNS, and that appeal remains pending while PDS has issued a Notice of Additional Requirements.

At the hearing for this motion, the Appellant's position, that the deteriorating and damaged Float continued to present a hazard to and degrade the surrounding properties, was asserted.

VII.

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

There is nothing in the WCC or in the BRWCHE that would make the summary judgment standard applicable in a civil trial court of record in this state a required standard for dismissal or applicable to these proceedings. That being said, upon inquiry by the Hearing Examiner, no parties participating had any objections to that standard, and it is not an unusual standard to use, especially where the facts do not appear to be in great dispute. Consequently, the facts will be examined and determined in the light most favorable to the appellants, which was done above.

II.

Timeliness

Appeals of Shoreline Exemptions decisions follow the appeal procedures

29 Ex. 13 at Ex. I.
30 Including one additional neighbor, not a party to this appeal.

outlined in WCC 23.60.150(H). The "Decision" falls under the "any other action of the administrator" category and thus the rule is that the appeal must be filed within "20 calendar days" of the Decision.[31]

The Decision was made on 6/23/22,[32] and the Appeal was made on 1/24/23,[33] which is a 215 day span of time from issuance of the Decision to the Appeal. The deadline for the appeal was on or about 7/13/22.

WCC 23.60.023(E) does provide that "[a] notice… ***shall*** be provided to… any party of record." It is uncontested that the Appellants' attorneys had requested notice of the decision and PDS did not give notice of the decision to the Appellants' attorneys. What the remedy for breach of this provision would be after a decision is made is unclear, because as is discussed below under "*Standing as a Party of Record*," parties of record do not gain automatic standing or appeal rights, and may not be otherwise prejudiced by the exemption. However, a 'Party of Record' in a zoning context is defined specifically in Whatcom County under WCC 20.97.293:

> "Party of record" means any of the following:
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> (1) The applicant and any appellant;
>
> (2) The property owner as identified by Whatcom County [A]ssessor's records;
>
> (3) Any person, county department, and/or public agency who individually submitted written comments or testified at the open record hearing on the merits of the case (excluding persons who have only signed petitions or mechanically produced form letters); and
>
> (4) Any person, county department, and/or public agency who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the open

31 WCC 23.60.150(H)(1)
32 Ex. 3
33 Ex. 4

record hearing.

A "party of record" does not include a person who has only signed a petition or mechanically produced form letters. A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same application/appeal. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

A party of record does not have standing unless they meet the standing criteria. Persons who do not qualify as parties of record may still receive notice of a decision or recommendation by submitting their names and addresses to the hearing examiner with a request for such notice.

At the time of the decision, the Appellants did not meet category (1), though they are now in fact appellants and entitled to notice. They also did not meet the criteria of categories (2) and (3) being neither the property owners or people or entities that submitted comments or testified in an open record hearing regarding the Decision; indeed, they submitted no comments or input prior to the Decision. Finally, the Appellants do not meet category (4) because while they did clearly request notice of a decision, it was not entered into a register at an open record hearing. They were not a party of record under the county code, though perhaps the PDS was willing to give them courtesy notice and failed to do so.

In arguendo, if they were a party of record, and if they had standing to appeal, and if they were deprived of the notice that would allow them to appeal, the question of timeliness and equity could arise. However, as unfair as it may seem, in regard to the validity of the Decision, a lack of notice at the time it was issued does not excuse a failure to appeal within the relevant time period. While there may be other remedies, it will not

be against the issued Decision itself.[34] In Durland v. San Juan County,[35] the Washington State Supreme Court described:

> …[P]etitioners brought an untimely challenge to San Juan County's issuance of a garage-addition building permit. Petitioners did not receive notice of the permit application and grant until the administrative appeals period had expired. Thus, petitioners claim that our court's interpretation of the Land Use Petition Act (LUPA), chapter 36.70C RCW, required them to do the impossible: to appeal a decision without actual or constructive notice of it. While this result may seem harsh and unfair, to grant relief on these facts would be contrary to the statutory scheme enacted by the legislature as well as our prior holdings. Indeed, we have acknowledged a strong public policy supporting administrative deadlines and have further explained that "[l]eaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature's intent to provide expedited appeal procedures in a consistent, predictable and timely manner." [36]

Lack of notice, even when notice in entitled, and even where county staff may have made promises,[37] does not extend the time period for appeal. Again, while there may or may not be remedies for the Appellants, any remedies will not be against the approved Decision.

In ulteriore arguendo, if the appellants were a party of record, and if they had standing to appeal, and if they were deprived of entitled notice in such a way that would raise the issue of equitable tolling the appellants would still have an issue. The Appellants argue that the "action of the administrator" and the 20 days for appeal following that should not be the Decision itself, arguing that "[n]othing in the code limits the "action of

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34 Durland v. San Juan County, 182 Wn.2d 55, 340 P.3d 191 (2014). This Supreme Court case consolidated and affirmed two Court of Appeals decisions: *Durland v. San Juan County*, 175 Wn.App 316, 305 P.3d 246, review granted, 179 Wn.2d 1001 (2013) (*Durland I*); and *Durland v. San Juan County*, 177 Wn.App 1002 (2013) (*Durland II*); *see also* Prekeges v. King County, 98 Wn.App 275, 990 P.2d 405 (1999) (in which King County failed to publish notice of the public comment period, failed to mail notice of the decision, and where County staff had previously assured appellant that there was still time to submit comments, it was found the appeal was untimely); *see also*

35 Durland, 182 Wn.2d at 59.

36 *Id. citing* Chelan County v. Nykreim, 146 Wn.2d 904, 933, 52 P.3d 1 (2002).

37 *Supra* note 33, *see description of* Prekeges.

the administrator" to the issuance of the decision… [and not] what was conveyed to Appellants in the communications from the County leading up to the issuance of notice on January 5, 2023." [38] Yet, the both the Decision and January notice ultimately issued both state "Such an appeal shall be filed within twenty (20) calendar days of this determination." [39] A plain reading of both the code and the notices pins the Decision itself as the appealable action of the administrator. Further, it is clear that the Appellants through their attorneys were given actual notice and a copy of the Decision on December 15, 2022.[40] Even if equitable tolling applied, as argued by the Appellants,[41] the deadline for filing an appeal would have been January 4, 2023, twenty days after actual notice.[42]

Under any of the series of cascading rationales above, the Appellants' filing on January 24, 2023, is incurably late, and it deprives the Hearing Examiner of jurisdiction.

III.

Standing

The Appellants make arguments about standing under three general theories: **1.)** that this project is being inappropriately piecemealed away from projects involving the float where they do have standing;[43] **2.)** that they have standing as a 'party of record';[44] and **3.)** that they are aggrieved and adversely persons affected by the decision pursuant to WCC 20.97.429.05.[45]

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38 Appellants' Response to Applicants' Motion for Summary Judgment at 10.
39 Exs. 3 and 9, emphasis added.
40 Ex. 8.
41 Appellants' Response to Applicants' Motion for Summary Judgment at 11 to 12.
42 *See* Habitat Watch v. Skagit County, 155 Wn.2d 397, 120 P.3d 56 (2005) (where appellant argued that because notice and an opportunity to be heard were not provided with respect to a permit hearing, those extensions are void and susceptible to challenge at any time, and our Supreme Court held that defective notice was inconsequential when they had actually learned about the decision but still failed to file within the appeal time frame despite lack of formal notice).
43 Appellants' Response to Applicants' Motion for Summary Judgment at 5-6.
44 *Id* at 7-8.
45 *Id*. at 7-8.

A shoreline exemption is a "Type 1" Application, which is an "Administrative Decision with No Public Notice or Hearing" with specific requirements outlined in WCC 23.60.[46] Generally, any person with "standing" may appeal any order, final permit decision, or final administrative determination made by the director or designee to the hearing examiner.[47, 48] Only a person with standing filing an appeal gives the Hearing Examiner the authority and jurisdiction to hear the appeal.

1.) Standing Transferred from Other Case Due to Inappropriate Piecemealing.

This Decision did not constitute inappropriate piecemealing and bring standing from the other appealed case.

This decision has independent life, intent, and purpose from the other separate applicant's desire. Indeed, but for the Float's very existence, the other matter would be moot, but the vice-versa is not true. This matter falls clearly in WCC 23.60.022(B), the normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements.

The applicants may or may not want to rent their property out to another for a specified purpose, or use their Float in a different way, but this application does not contemplate any differing use than pre-existing usage. The float has been in place since 1956, and the conditions specifically require "consistent with the scope of the application materials …" [49] those materials specifically contemplate that "This float is essentially a floating patio deck with means for boat moorage -- nothing more." [50] This is consistent

46 WCC 22.05.020.
47 WCC 22.05.160
48 In their briefing, a party cited to WCC 22.05.110(e) in additional regards to a requirement of standing being emphasized by the code, but that section of the code refers to appealing Type III hearing examiner decisions. It is not a substantive error because the section applicable to Type 1 appeals in WCC 22.05.160 has nearly identical language: "Any person with standing may appeal..."
49 Ex. 3 at condition 1.
50 *Id*. at 8.

with its pre-existing use, hampered by damage from the elements, and does not allow for any of the new or proposed uses that are proposed and the subject of the other appeal involving a different applicant. The granting of this decision does not affect or prejudice the rights of the appellants in the other hearing that they are parties to.[51]

2.) Standing as a Party of Record.

The Appellants do not have standing as parties of record.

A 'Party of Record' in a zoning context can encompass many persons in Whatcom County under WCC 20.97.293. The Appellants could have argued they fit one or more of the categories to be a party of record beyond merely asserting standing as a party of record, but "[a] party of record does not have standing unless they meet the standing criteria." [52]

Standing for appeals of Shoreline Exemptions have a specific rule regarding standing, and that rule specifically exempts parties of record from having 'standing' by way of being a party of record.[53] This is explicitly contrasted with "shoreline substantial development permits, shoreline variances, or shoreline conditional use permits" in which all parties of record are granted standing.[54]

Merely being a party of record is specifically exempted from standing in regard to Shoreline Exemption decisions.

3.) Standing as an aggrieved and adversely affected party.

The general rule for standing is found in WCC 20.97.429.05 which follows the Washington State rule for standing in the Land Use Petition Act as follows:

> "Standing" is the status required for a person, agency, or other

51 *See* APL2021-00003
52 WCC 20.97.293
53 WCC 23.60.150(C)
54 *Id*.

entity to bring an action before the hearing examiner. A person has standing per RCW 36.70C.060 if they are:

> (1) The applicant and the owner of property to which the land use decision is directed; or
>
> (2) Another person, county department, and/or public agency aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
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> > (a) The land use decision has prejudiced or is likely to prejudice that person;
> >
> > (b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
> >
> > (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
> >
> > (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

Nothing in the record shows that the Appellants meet any of these criteria, once we appropriately separate the argument about this Decision to allow repairs for pre-existing uses from the Appellant's interests in APL2021-00003 in which a different applicant has proposed new uses, and where the Appellants have standing. In particular, argument was made by the Appellants that the continued deterioration and damage to the Float harms them and their interests, but this Decision actually remedies that alleged harm. Specifically, the conditions of the Decision appear to address all of the harms they assert:

> 7. The dock shall be anchored to prevent floatation, collapse and lateral movement.
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> …
>
> 9. The proposed dock shall be constructed and maintained so that no part of the dock creates hazardous conditions nor damages

> other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
> …
> 18. The existing dock shall be wholly removed prior to commencing construction of the new dock … [technical details omitted]…[55]

The Appellants are neither the property owners nor the applicants, and none of the pre-existing uses since 1954 nor repairs to rehabilitate the Float appear to harm or prejudice the rights or interests of them. The Decision about repairs of an exiting float, and indeed cleaning up the hazards, do not prejudice the Appellants' interests in objecting to new or other uses of the Float by other parties which are not a subject of this appeal of the underlying decision. Contrary to the Appellants' arguments at the hearing, this Decision does not permit oyster farming.

When appellants lacks standing, the body hearing the appeal lacks jurisdiction to hear the appeal.[56]

IV.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Motion to Dismiss is granted.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

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55 Ex. 3, from conditions.
56 Knight v. City of Yelm, 173 Wn.2d 325, 336-337, 267 P.3d 973 (2011).

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040; or for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to 23.60.150(E), RCW 90.58.180, and WAC 461-08.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at http://www.codepublishing.com/WA/WhatcomCounty.

DATED this 10th day of May 2023.

Rajeev D. Majumdar
Hearing Examiner *pro-tem*