

BEFORE THE STATE BOARD OF LAND COMMISSIONERS  
STATE OF IDAHO

In the Matter of:	)	
	)	Case No. PH-2019-PUB-22-004
Encroachment Permit Application	)	
No. L-95-S-4798H	)	<b>FINAL ORDER</b>
	)	
Chris Cheeley,	)	
	)	
Applicant.	)	
	)	
	)	
	)	

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**I. PROCEDURAL BACKGROUND**

Non-navigational encroachments such as boat garages and float homes, and navigational encroachments including single-family docks, placed in or on the beds of navigable waters require a permit issued by the Idaho Department of Lands (“IDL”) pursuant to the requirements of the Lake Protection Act, Title 58, Chapter 13, Idaho Code; and the corresponding administrative rules promulgated by the State Board of Land Commissioners, IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters and Airspace over Navigable Lakes in the State of Idaho.”

On or about April 30, 2019, Applicant Chris Cheeley applied for an encroachment permit to remove and rebuild, at a new location within his littoral right lines, a boat garage and float home, and replace a single-family dock on the Spokane River. A public hearing was held on July 9, 2019. Ms. Karen Sheehan served as the duly appointed Hearing Coordinator. Ms. Sheehan issued the Preliminary Order on August 5, 2019, which contains Findings of Fact and Conclusions of Law derived from the administrative record including testimony received during the public hearing.

My responsibility, as Director of IDL, is to render a decision pursuant to Idaho Code §§ 58-1305(c) and 58-1306(c), and IDAPA 20.03.04.030.07 on behalf of the State Board of Land

Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. In making this determination I have relied on the record for this matter, including the following materials:

- I have reviewed the written record including all documents and exhibits.
- I have examined the Hearing Coordinator's Preliminary Order in light of the entire record in this contested case.

## **II. FINDINGS OF FACT**

I concur with the Procedural Background and Findings of Fact presented by the Hearing Coordinator in the Preliminary Order.

## **III. CONCLUSIONS OF LAW**

I concur with the Conclusions of Law found by the Hearing Coordinator in the Preliminary Order.

## **IV. ORDER**

I conclude that the Hearing Coordinator's recommendations in the Preliminary Order are based on substantial evidence in the record, and I adopt those recommendations as my decisions in this matter. The Preliminary Order is hereby incorporated, by reference, in its entirety into this Final Order, and is enclosed and served along with this Final Order. The Preliminary Order is for conditional approval of the Application.

Mr. Cheeley is qualified to make application for an encroachment permit for a boat garage, float home, and single-family dock on the Spokane River. The Application is in conformance with applicable rules and regulations. The Application is approved, subject to Mr. Cheeley submitting documents to IDL, as required under IDAPA 20.03.04.015.10, on or before August 8, 2019, including float home construction drawings stamped by an engineer licensed in the

state of Idaho; and then, the timely receipt by IDL of acceptable documentation regarding water and sewer service to the float home. Based upon all of the foregoing, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-95-S-4798H is CONDITIONALLY APPROVED by IDL.

This is a final order of the agency. Pursuant to Idaho Code § 58-1305(c) and IDAPA 20.30.04.030.09, the Applicant, or any aggrieved party who appeared at the hearing, shall have the right to have the proceedings and this Final Order reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of this Final Order. *See also* I.R.C.P. 84. Because this Final Order is for approval of an encroachment permit, any aggrieved party, other than the Applicant, appealing this Final Order must file a bond with the district court in accordance with Idaho Code § 58-1306(c). The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

DATED this 7<sup>th</sup> day of August, 2019.

  
Dustin T. Miller  
Director, Idaho Department of Lands

## CERTIFICATE OF MAILING

I hereby certify that on this 7<sup>th</sup> day of August, 2019. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Coeur d'Alene, ID 83814

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**BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS**

In the Matter of:	)	
	)	Case No. PH-2019-PUB-22-004
ENCROACHMENT PERMIT APPLICATION	)	
No. L-95-S-4798H,	)	
	)	<b>PRELIMINARY ORDER</b>
Chris Cheeley,	)	
	)	
Applicant.	)	
_____	)	

**I. BACKGROUND**

On April 30, 2019, the Idaho Department of Lands (“IDL”) received an encroachment permit application from Chris Cheeley (“Applicant”). (Agency Record.) IDL assigned number L-95-S-4798H to the Application (“Application”). In the Application, Applicant seeks authorization to re-locate his boat garage and float home combination and re-build a single family dock on the Spokane River. (Agency Record.)

On May 2, 2019, IDL provided notice of the Application to various government agencies as well as to the adjacent littoral owners. (Agency Record, 2 and 3.) IDL also caused a Notice of

Application to be published in the Coeur d'Alene Press (a newspaper with general circulation in Kootenai County pursuant to Idaho Code § 58-1306(b)). (Agency Record)

IDL received comments from Howard Rude on May 13, 2019, with supplemental written comments submitted on July 1, 2019, in opposition to the Application. Comments were also received from the Panhandle Health District dated May 7, 2019, and from the Idaho Transportation Department dated May 9, 2019. The concerns with the Application as set forth in Mr. Rude's objection can be summarized as follows:

- The proposed relocation will cause a navigation hazard as the relocation will block access to a natural water channel and access to deep water.
- The proposed relocation will hinder recreation use by the Rudes from their property as it cuts off access to deep water. An existing sand bar restricts access from the Rudes' property to deep water.
- The proposed relocation will substantially obstruct the Rudes' views of the southwest mountains and waterways from their property.

On June 6, 2019, IDL ordered that a public hearing be held pursuant to Idaho Code § 58-1306(c). IDL's Director, Dustin T. Miller, issued a *Notice of Appointment of Hearing Coordinator and Hearing* appointing Karen Sheehan as the Hearing Coordinator assigned to conduct the hearing and issue a preliminary order.

On July 9, 2019, IDL held a public hearing. At the hearing, Chris Cheeley presented testimony in support of the Application. Howard Rude provided testimony in opposition to the Application. His testimony was consistent with his concerns set forth in his written comments. Mike Ahmer, IDL Resource Supervisor, proved testimony on behalf of IDL. (Hearing Recording.)

## II. FINDINGS OF FACT

1. Applicant owns 6314E Maplewood Avenue. This property is adjacent to the Spokane River in Post Falls. (Agency Record.)

2. Applicant has an existing permit (No. L-95-S-4798G) for a boat garage and float home combination, along with a single-family dock, a water intake line, and riprap. The existing permit is for a 10' x 6' ramp; a 25' x 24' single-slip dock with 10' x 5' finger connecting to an existing float home/boat garage; and existing 66' x 18' float home/boat garage. (Hearing Recording.)

3. Applicant wants to “move existing boat garage to new location on property. Old garage will be removed & disposed of. Boat garage and float home will be rebuilt, new, in specified location, along with single family dock.” (Agency Record.)

4. On May 2, 2019, IDL sent a Notice of Application to Applicants’ neighbors. (Agency Record.)

5. The Rudes own land adjacent to Applicant’s property. On May 13, 2019 and July 1, 2019, IDL received objections to Applicant’s Application from Howard Rude. (Agency Record.)

## III. ANALYSIS AND CONCLUSIONS OF LAW

1. The State of Idaho Board of Land Commissioners (“Board” or “Land Board”) is authorized to regulate, control, and permit encroachments in the beds of navigable lakes, rivers, and streams in the state of Idaho. Idaho Code §§ 58-104(9), 58-1305 and 58- 1306.

2. The Board exercises its authority through the instrumentality of IDL. *See* Idaho Code §§ 58-101 and 58-119.

3. Applicant has filed an Application seeking an encroachment permit to move an existing boat garage and float home to a new location on his property and to rebuild a single family dock. (Hearing Recording. Agency Record.)

4. A boat garage is defined as a structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. IDAPA 20.03.04.010.06. Permit requirements for boat garages are set out in IDAPA 20.03.04.015.05 as follows:

**015. ENCROACHMENT STANDARDS.**

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**05. Boat Garage.**

- a. Boat garages are considered nonnavigational encroachments.
- b. Applications for permits to construct new boat garages, expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services.
- c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height.
- d. Relocation of an existing boat garage will require a permit.

5. A float home is defined as a structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. IDAPA 20.03.04.010.17. Permit requirements for float homes are set out in IDAPA 20.03.04.015.10 which requires:

**015. ENCROACHMENT STANDARDS.**

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**10. Float Homes.**

- a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted.
- b. Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements:



- i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department.
- ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code," as incorporated by reference in Section 004 of these rules, installed properly, and has been pressure tested.
- c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home.
- d. All plumbing work on float homes must be done in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code" and IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," as incorporated by reference in Section 004 of these rules.
- e. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012:
  - i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed.
  - ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system.
  - iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter.
  - iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses.
  - v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float

homes must have an individual sewer line from the float home to a facility on the shore.

- f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date.
- g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules.
- h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho.

6. A single family dock is defined as a structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. IDAPA 20.03.04.010.36. Permit requirements for single-family docks are set out in IDAPA 20.03.04.015.01 as follows:

**015. ENCROACHMENT STANDARDS.**

- 01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks.
  - a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out.
  - b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock.
  - c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability.
  - d. A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of navigability.

7. Mike Ahmer, a Resource Supervisor with IDL, testified regarding his assessment of the Application. He testified that IDL has not yet conducted a site inspection but that the Application indicates that the current boat garage/floating home will be replaced with a new garage/floating home that will have the same square footage and the height of the garage will not change. (Hearing Recording.)

8. Mr. Ahmer also testified that the Application indicates the single-family dock will meet the IDAPA encroachment standards. In his opinion, the dock is within the line of navigability due to the adjacent neighbors' encroachments combined with the extreme shallowness of that portion of the river. He concluded that if Applicant can provide stamped drawings within thirty (30) days, then the Application meets all of the IDAPA encroachment permit requirements.<sup>1</sup> (Hearing Recording.)

9. There were no objections raised at the Hearing or by written public comment that the Application did not meet all of the IDAPA requirements.

10. Mr. Rude objected to the encroachment permit arguing it will be a proposed navigation hazard, hinder recreational use, and obstruct the aesthetic beauty from his property. He testified that Applicant's river frontage is 200 feet wide and the current boat house/ramp is 50 feet from the Rudes' east property line. He is recommending two options. The first option is that the proposed boat house and approach ramp be moved to 125 feet west of the Rudes' property line. This relocation will allow safe access for the Rudes' watercraft around the sandbar to 36'' to 40'' deep water to avoid potential navigation hazards and accidents. His second recommended option

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<sup>1</sup> There was discussion during the hearing regarding water/plumbing requirements. Applicant informed IDL that there is water and sewer. IDL determined Applicant could move forward with the Application and if the Final Order approves the Application then there would be a condition in the permit regarding receipt of water/sewer documentation and stamped engineer drawings.

is for the sandbar to be dredged. (Hearing Recording, Rude Objections dated May 13, 2019 and July 1, 2019.)

11. Applicant addressed Mr. Rude's comments regarding moving the proposed structure so Mr. Rude will have access to deep water. In his opinion, he cannot place the boat house/garage anywhere on his property that would enable Mr. Rude to have access to more than 2 ½ feet of water depth. (Hearing Recording.)

12. Mr. Ahmer addressed Mr. Rude's options. He indicated any request for dredging would be done under a separate process and does not relate to the requirements for Applicant's encroachment permit that is the topic of the public hearing. He also stated that Applicant's decision to move the boat house and ramp would be within Applicant's discretion. IDL only considers whether there is a 25 foot buffer and if Applicant meets this requirement. (Hearing Recording.)

13. The Hearing Coordinator is empathetic to Mr. Rude's situation. However, none of Mr. Rude's objections or recommendations touch on any of the requirements for encroachment permits set out by the IDAPA sections referenced above.

14. The Hearing Officer finds by a preponderance of the evidence, the record includes sufficient evidence for Applicant to meet his burden of proof that the Application for a permit to remove the existing boat garage/float home and build a new garage/float home with the same square footage and height meets the above-referenced IDAPA requirements.

15. Based on the evidence in the record, Applicant's Application is approved.

#### **IV. PRELIMINARY ORDER**

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that Encroachment Permit Application No. L-95-S-4798H is APPROVED subject to

the condition that Applicant will provide documentation regarding water/sewer and stamped engineer drawings as discussed during the hearing as well as subject to any additional conditions imposed by the Director of the Idaho Department of Lands.

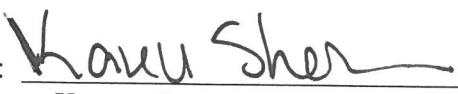
IT IS FURTHER ORDERED that the order issued is a PRELIMINARY ORDER. Idaho Code §§ 58-1305(c), 58-1306(c), 67-5420 and 67-5245; *Notice of Appointment of Hearing Coordinator and Hearing*.

The hearing in this matter was completed on July 9, 2019. Consistent with the *Notice of Appointment of Hearing Coordinator and Hearing*, “The Hearing Coordinator shall submit a preliminary order to the Director of the Idaho Department of Lands, who shall issue a Final Order no more than thirty (30) days after the conclusion of the hearing.” This Preliminary Order is submitted fewer than thirty (30) days after conclusion of the hearing.

As provided in Idaho Code § 67-5240, the contested case provisions of the Administrative Procedures Act do not apply where the legislature has directed the use of alternative procedures. Because the legislature has enacted specific alternative procedures in Idaho Code § 58-1306(c) that requires a final order to be issued within 30 days of the hearing, and leaves insufficient time to consider petitions for review of preliminary orders, the procedures of Idaho Code § 67-5245 addressing petitions for review of preliminary orders are not applicable. *Notice of Appointment of Hearing Coordinator and Hearing*.

DATE: August 5, 2019.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By:   
KAREN SHEEHAN  
Hearing Coordinator

\* \* \* \* \*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of August, 2019, I caused to be served a true and correct copy of the foregoing by the following method to:

Chris Cheeley  
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Post Falls, ID 83854

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Email

Howard Rude  
6426 E. Maplewood Ave.  
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Email: hrude@etcoservices.com

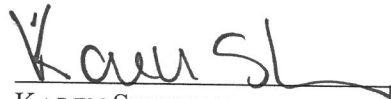
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