

June 15, 2012

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse, Room 1200
516 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-0198
Email hearingexaminer@kingcounty.gov

ORDER OF DISMISSAL

SUBJECT: Department of Development and Environmental Services File No. **E0901014**

JAMES AND KIRSTEN HOVERTER
Code Enforcement Civil Penalty Appeal

Location: 9626 SW 180th Street

Appellants: James and Kirsten Hoverter
represented by **Michael Bradley**
13321 SW Camp Sealth Road
Vashon, WA 98070
Telephone: (206) 463-2055
Email: michaelvsh@aol.com

King County: Department of Development and Environmental Services (DDES)
represented by **Sheryl Lux**
900 Oakesdale Avenue SW
Renton, WA 98057
Telephone: (206) 205-1525
Email: sheryl.lux@kingcounty.gov

1. DDES issued a billing invoice in a code enforcement action against Appellants James and Kirsten Hoverter on December 21, 2011 for civil penalties in the amount of \$15,300.00. Included in the invoice document is a notice of right to appeal, which states the appeal deadline for filing an appeal from a civil penalty invoice as follows: "a written notice and statement of appeal must be received by [DDES] within 14 days *from the date of this invoice.*" (Emphasis added) That indication of the appeal period and effective deadline correctly reflects the pertinent county code provision setting forth the manner in which an appeal period is calculated for this type of action, that the period runs from the date of the invoice, not from another date such as date of mailing, date of receipt, date of service, etc. [KCC 23.32.100.B] The official date of invoice was clearly noted in the invoice document on all of its pages, including the page on which the notice of appeal right and process was stated in detail, including the manner of calculation of the appeal period and its deadline.
2. The invoice was not received by the Appellants until December 29, 2011. The envelope in which the invoice was mailed was postmarked December 27, 2011.

3. The Appellants assert that because of DDES's delay in mailing the invoice (a delay of six calendar days, but which because of the Christmas holiday only included three business days) and the resultant delayed receipt by Appellants on December 29, 2011, the appeal period of 14 days should be counted as commencing not from the invoice date but rather from the date of mailing by postmark if not the date of receipt. Following that line of reasoning, the appellants took it upon themselves to then devise their own calculation of the appeal period and deadline and did not submit their appeal of the invoice until January 6, 2012.
4. Calculating the appeal period expressly established in KCC 23.32.100.B as running from the invoice issuance date, the appeal filing deadline in this case was January 4, 2012. Thus, the appeal was filed two days after the deadline established by the code.
5. DDES filed a motion to dismiss the appeal as untimely.
6. It is perhaps understandable but is unfortunate that the Appellants decided unilaterally to make their own calculation of what they considered to be the proper appeal period runout and a resulting different deadline than that expressly established by the code. Despite the invoice having been mailed later than its date of issuance, and its resultant receipt later than would otherwise have likely occurred if it had been mailed the same day as issuance, the Appellants nevertheless had three full business days (excluding the date they received the invoice) during which to file an appeal, bracketing a three day weekend (with the New Year's Day public holiday in 2012 observed Monday, January 2), for a total of six calendar days. Though not ideal and not an overly generous amount of time, it was sufficient for a party who properly read the notice of the appeal deadline and the manner in which it is calculated under the code, and responded diligently, to file a timely appeal (and to do so by overnight mail or hand delivery if necessary).
7. This situation, where a reasonable amount of time in which to act diligently to file an appeal was afforded Appellants despite the delayed mailing, offers no option for the Examiner but to observe the express requirement of the code that the appeal period be counted from the date of invoice. By that proper calculation, the appeal was untimely as DDES contends.
8. Accordingly, DDES's motion to dismiss the appeal as untimely is meritorious and shall be granted.

The appeal is DISMISSED as untimely. The Examiner's jurisdiction over this matter is terminated.

DATED June 15, 2012.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

The examiner's summary dismissal order shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use final order or decision is issued by the Hearing Examiner as three days after the written document is mailed.)

MINUTES OF THE APRIL 12, 2012, MOTION HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0901014.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux for the Department of Development and Environmental Services, Michael Bradley on behalf of the Appellants and the Hoverterers.

The following Exhibits were offered and entered into the record:

Exhibit no. 1	DDES staff report to the Hearing Examiner for file no. E0901014.
Exhibit no. 2	Copy of the December 21, 2011 civil penalty invoice
Exhibit no. 3	Appeal Statements A. Copy of the Appeal statement received January 6, 2012 B. Copy of amended Appeal Statement received February 23, 2012
Exhibit no. 4	DDES log notes for permit B95R1653
Exhibit no. 5	DDES log notes for code enforcement file no. E0901014
Exhibit no. 6	Notice and Order issued December 20, 2010
Exhibit no. 7	Photocopy of envelope that contained subject invoice annotated to highlight mailing date of December 27, 2011

PTD/gao

June 15, 2012

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CERTIFICATE OF SERVICE

SUBJECT: Department of Development and Environmental Services File No. **E0901014**

JAMES AND KIRSTEN HOVERTER
Code Enforcement Civil Penalty Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that on June 15, 2012, I transmitted the **ORDER OF DISMISSAL** to the following parties of record and interested persons:

Michael Bradley
13321 SW Camp Sealth Road
Vashon, WA 98070

Elizabeth Deraitus
900 Oakesdale Avenue SW
Renton, WA 98057

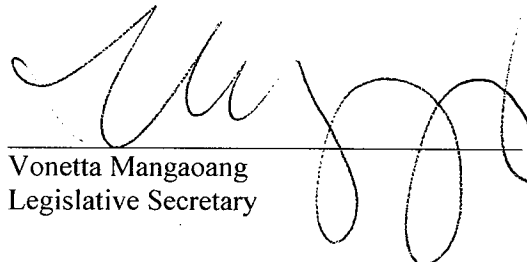
James and Kirsten Hoverter
PO Box 37
Vashon, WA 98070

Sheryl Lux
900 Oakesdale Avenue SW
Renton, WA 98057

Toya Williams
900 Oakesdale Avenue SW
Renton, WA 98057

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.
- caused to be placed with the United States Postal Service, with sufficient postage, as **CERTIFIED MAIL** with a return receipt requested in an envelope addressed to the primary parties.

DATED June 15, 2012.



Vonetta Mangaoang
Legislative Secretary

\vsm