

March 21, 2013

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse, Room 1200
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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review File No. **E0901062**

CHERYL VELDWYCK
Civil Penalty Appeal

Location: 16005 SE 144th Street, Renton

Appellant: **Cheryl Veldwyk**
5500 Rainier Avenue S
Seattle, WA 98118
Telephone: (206) 650-4645
Email: cw4645@aol.com

King County: Department of Permitting and Environmental Review
represented by **Holly Sawin**
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Snoqualmie, WA 98065
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SUMMARY OF RECOMMENDATIONS/DECISION

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant in part, deny in part

EXAMINER PROCEEDINGS

Hearing Opened:	March 20, 2013
Hearing Closed:	March 20, 2013

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On September 14, 2011, the King County Department of Permitting and Environmental Review, Code Enforcement Section (DPER) issued a notice and order to Cheryl Veldwyck for property located at 16005 SE 144th Street. The property was cited for construction enclosing a breezeway between a residence and a detached garage without required permits. A timely appeal of the notice and order sought more time to effect compliance. A public hearing on the appeal was held by Hearing Examiner Peter Donahue on March 20, 2012, and a decision denying the appeal was issued on July 12, 2012, as modified by an order issued on July 30, 2012.
2. The Hearing Examiner's decision issued in July, 2012, set a 45-day compliance deadline for completing the building permit application. DPER computed this deadline as falling on September 24, 2012. When it was not met, DPER issued on November 15, 2012, an interim billing statement for \$3,300 in penalties based on 48 days of noncompliance. The penalty statement did not contain an appeal provision, but Ms. Veldwyck appealed it nonetheless on November 26, 2012, stating that the construction was building code compliant but that she could not yet pay for the permit.
3. At the civil penalty appeal hearing held on this matter on March 20, 2013, Ms. Veldwyck provided more detail concerning her situation. The total cost of her ABC permit, which itself contains a built-in penalty factor, was \$2,914.53. Prior to September 24, 2012, she had been able to pay \$1,054.72, leaving a deficit on that date of \$1,859.81. According to DPER staff, Ms. Veldwyck was indeed able to pay the remaining sum due on the permit and receive a final inspection on March 1, 2013. The Department has estimated the value of Ms. Veldwyck's breezeway addition to be a little more than \$23,000, for which the Department expects to bill her approximately \$7,500 in permit fees and penalties, which also includes the portion calculated subsequent to November 15, 2012.

CONCLUSIONS

1. KCC 23.32.100 authorizes a person responsible for code compliance to appeal civil penalties assessed "for any time period after achieving compliance with the notice and order, stop work order or voluntary compliance agreement." The July 12, 2012 Hearing Examiner decision in Ms. Veldwyck's appeal superseded the notice and order timelines and the penalties being assessed by the Department are based on the new compliance deadline stated by the Hearing Examiner decision.
2. In evaluating a civil penalty appeal based on failure to comply with a Hearing Examiner deadline, the Examiner may rely upon the full range of policies and regulations stated at KCC Chapter 23.32. More specifically, KCC 23.32.050.B.2 provides for the waiver of fines and penalties when the underlying code violations have been cured and compelling reasons exist to justify the waiver.

MINUTES OF THE MARCH 20, 2013, PUBLIC HEARING ON DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. E0901062.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department and Cheryl Veldwyck the Appellant.

The following exhibits were offered and entered into the record:


- Exhibit no. 1 Department staff report to the Hearing Examiner for civil penalty appeal file no. E0901062
- Exhibit no. 2 Civil penalty invoice for file no. E0901062 issued dated November 15, 2012
- Exhibit no. 3 Civil penalty of Cheryl Veldwyck filed November 26, 2012
- Exhibit no. 4 DPER case notes for permit no. B12M0292
- Exhibit no. 5 Notice and Order file no. E0901062 issued September 14, 2011
- Exhibit no. 6 Hearing Examiner Order Modifying Condition issued July 30, 2012 and Report and Decision issued July 12, 2012
- Exhibit no. 7 Construction permit no. B12M0290 issued February 14, 2013 and expiring February 14, 2014
- Exhibit no. 8 Inspection report card for permit no. B12M0290, completed March 1, 2013

3. The following factors support the exercise of waiver authority in this appeal proceeding. First, there is no basis in the record for concluding that the breezeway construction on the Veldwyk property was improperly done or resulted in any building code violations. Rather, the violation consisted entirely of failure to get a building permit for what may have been viewed as a nonstructural project. Second, the ABC permit fee already has a hefty penalty component built in, so what the Department is seeking in this instance is essentially a penalty upon a penalty. In view of the minor nature of the construction involved and its modest overall value, a total processing cost of \$7,500 seems excessive.
4. On September 24, 2012, when the payment deadline established by the Hearing Examiner decision came due, Ms. Veldwyk owed approximately \$1,860. That obligation was cleared on March 1, 2013. Under the circumstances described above, Ms. Veldwyk should only have to pay interest on the overdue amount. RCW 19.52.020 establishes the State's maximum usury rate to be 12 percent. Based on the amount due, the time of delinquency and the State usury maximum, Ms. Veldwyk's total obligation should be adjusted to the sum of \$111 for delinquent interest.

DECISION

The appeal is GRANTED in part and DENIED in part. It is granted as to that portion of the invoiced amount that exceeds \$111. The portion of the appeal denied and the sum currently due to the Department is the obligation to pay a civil penalty in the amount of \$111 for the entire period of delinquency occurring subsequent to September 24, 2012.

ORDERED March 21, 2013.



Stafford L. Smith
King County Hearing Examiner *pro tem*

SLS/vsm

NOTICE OF RIGHT TO APPEAL

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county regarding code enforcement appeals. The Examiner's decision 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 decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review File No. **E0901062**

CHERYL VELDWYCK
Civil Penalty Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- 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.

DATED March 21, 2013.



Vonetta S. Mangaoang
Legislative Secretary

All Parties of Record

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Parties Receiving Hardcopy

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