

September 13, 2017

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
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Seattle, Washington 98104  
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**ORDER OF DISMISSAL**

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR150165**  
(Penalty)

**JOHN MORAUSKI**  
Civil Penalty Waiver Appeal

Location: 47150 SE 162nd Street, North Bend

Appellant: **John Morauski**  
2512 Pine Ridge Court  
Portage, WI 53901  
Telephone: (206) 919-1195  
Email: [john@aboveaveragellc.com](mailto:john@aboveaveragellc.com)

King County: Department of Permitting and Environmental Review  
*represented by* **Holly Sawin**  
35030 SE Douglas Street Suite 210  
Snoqualmie, WA 98065  
Telephone: (206) 477-0291  
Email: [holly.sawin@kingcounty.gov](mailto:holly.sawin@kingcounty.gov)

On June 30, 2017, the Department of Permitting and Environmental Review (DPER) denied John Morauski's penalty waiver request, stating, among other things, that "Failure to effectively appeal this decision by **July 17, 2017** renders the decision final." (Att. at 028, bold in original). This tracked KCC 23.32.100.B, which requires that, "In order to be effective, a written notice and statement of appeal must be received by the department within 17 days from service of the director's penalty waiver decision." Mr. Morauski drafted his appeal on July 24, which made it to DPER by July 28. (Att. at 005-07.) Thus, DPER moved to dismiss the appeal as untimely. (Att. at 003.)

In many scenarios, an examiner has a fair amount of discretion and flexibility. For example if an appeal is timely but inadequate in content, an examiner “may” dismiss the appeal, but alternatively “may” allow a party to clarify the appeal issues. KCC 20.22.090.B. Requiring clarification, instead of dismissal, is almost always the approach we choose in such a scenario. We would do so here if *content* were the shortcoming in this appeal. (Mr. Morauski’s appeal was just fine on content.)

However, untimely appeal statements are decidedly different. The examiner “shall” (not “may”) dismiss an untimely appeal. KCC 20.22.090.A. There is no alternative option an examiner can select, regardless of empathy level. KCC 20.22.080.H is crystal clear that where:

a person fails to timely deliver the appeal statement[, the] examiner does not have jurisdiction to consider the appeal and the decision of the department ... becomes final and unreviewable.

We appreciate Mr. Morauski’s candor in explaining that it was a simple mistake and confusion on his part, thinking he had 24 days to appeal. That is understandable; 24 days is indeed the relevant window in many contexts, including the initial penalty assessment for which he timely requested a waiver. *See, e.g.*, KCC 23.32.050.A. (Att. at 032–33.) But as DPER’s June 30 waiver denial accurately stated, the appeal window for a penalty appeal for the Examiner is 17 days, shutting here on July 17. We thus have no jurisdiction to consider his untimely appeal statement.

Mr. Morauski’s appeal is accordingly DISMISSED.

As noted at the end of yesterday’s hearing, Code Enforcement now transfers the matter to the Prosecuting Attorney’s Office for compliance on the underlying notice and order. We assume that some point Mr. Morauski will receive further instructions from the County.

DATED September 13, 2017.



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David Spohr  
Hearing Examiner

### **NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

DS/ed

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**CERTIFICATE OF SERVICE**

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR150165**  
(Penalty)

**JOHN MORAUSKI**  
Civil Penalty Waiver Appeal

I, Elizabeth Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and 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/interested persons to addresses on record.

DATED September 13, 2017.



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Elizabeth Dop  
Legislative Secretary

**Deraitus, Elizabeth**

Department of Permitting and Environmental Review

**Lux, Sheryl**

Department of Permitting and Environmental Review

**Morauski, John**

Hardcopy

**Sawin, Holly**

Department of Permitting and Environmental Review

**Williams, Toya**

Department of Permitting and Environmental Review