

November 8, 2019

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR151159**

WILLIAM CHANDLER
Code Enforcement Appeal

Location: 22212 NE Union Hill Road, Redmond

Appellant: **William Chandler**

[REDACTED]
Redmond, WA 98053
[REDACTED]

King County: Department of Local Services
represented by **LaDonna Whalen**
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-5567
Email: ladonna.whalen@kingcounty.gov

POSITIONS/DECISION:

Department Position:

Appellant Position:

Examiner's Decision:

Deny Appeal

Grant Appeal

Deny Appeal

FINDINGS AND CONCLUSIONS

1. **Background.** King County Department of Local Services (Department) issued a Notice of Civil Violation after reviewing third-party complaints regarding unpermitted clearing and conversions to residential use of accessory structures. Mr. Chandler appealed to the Hearing Examiner.
2. **Hearing.** The Hearing Examiner held an open record hearing on September 24, 2019. The Department presented its case through Code Enforcement Officer Whalen. Mr. Chandler provided sworn testimony, as did Officer Breazeal, who Mr. Chandler called as a witness.
3. **Evidence.** The attached minutes list admitted exhibits. The Department objected to Exhibits 14-16 due to timeliness. The exhibits were due August 13, 2019, but were submitted on September 17, 2019. The Appellant interpreted the pre-hearing order as allowing him until September 17. However, this was the deadline for rebuttal exhibits, not the initial disclosures. While late, the exhibits were received about a week before the hearing, but Department schedules precluded review. The exhibits were admitted, but to help address the Department's fairness concerns, the Examiner allowed post-hearing briefing, which the parties submitted on October 24.¹
4. Mr. Chandler objected to Exhibits 6-8, as he viewed the photographs as the result of illegal trespasses. Officer Breazeal took the photographs, which included depictions of tree stumps and graded areas. The pictures were taken on February 4, 2016 (two photos); May 13, 2016 (11 photos); and, May 20, 2016 (five photos). The only photographs taken on site were the two from February 4, 2016 (Exhibit 6). The others were taken from off site, from two adjacent properties. As Finding 9 details, the manner in which the photographs were taken was proper and legal.² The Exhibits are admitted.
5. The Department raised concerns over the dates Mr. Chandler's tree photographs (Exhibit 15) were taken and its ability to verify three declarations he provided (Exhibit 14). To address this, the Examiner set deadlines for Mr. Chandler to submit electronic photographs (meta data) to the Department, so the Department could verify photograph dates, and sworn statements. Mr. Chandler timely submitted the photographs (Exhibit 17) and sworn statements from two of the witnesses (Exhibit 18). A third sworn statement could not be obtained due to witness health. No further objections were raised. All exhibits submitted are admitted.
6. **Department's Allegations, Summary.**
 - **Alleged Violation 1:** Clearing of over 7,000 square feet of vegetation without a permit.³

¹ Summary Order, Post Hearing Deadlines (October 8, 2019).

² While admitted, the photographs are unnecessary to establish that trees were removed during grading or the extent of the grading. These facts were independently established through other documents. Mr. Chandler also provided evidentiary support with his testimony. *See* Finding 4.

³ KCC 16.82.050, .051, and .150; *see* KCC 16.82.051, Note 24 (clearing limited to downed tree removal).

- **Alleged Violation 2:** Conversion of accessory building (detached garage) into habitable space without required permits.⁴
 - **Alleged Violation 3.** Conversion of basement into habitable space without required permits.⁵
7. **Vegetation Clearing.** Aerial photographs, coupled with testimony from Ms. Whalen, document that between 2013 and 2017, 39,624 square feet of land was cleared without a permit.⁶ The areas depicted as cleared was not contested. Not all clearing requires a permit. The code exempts up to 7,000 square feet (cumulatively on one site), hazard trees, and invasive species such as blackberry.⁷
 8. At the hearing, Mr. Chandler claimed the invasive species and hazard tree exemptions applied. The Department was concerned that the hazard tree argument was not raised in the appeal, which was limited to blackberry bush removal. The appeal did not raise the hazard tree exemption, so it is a new issue. But, in fairness to the property owner, the code does allow hazard tree removal, so the Examiner allowed the argument.
 9. Mr. Chandler testified that he removed invasive blackberry from the site. However, the aerial photography and testimony from Officer Whalen established that the cleared areas were primarily blanketed with trees. Mr. Chandler’s testimony that he removed roughly 50 hazard trees also undercuts the argument that primarily blackberry bushes were removed.
 10. Mr. Chandler submitted photographs of trees which he stated were hazard trees. The photos did document growth irregularities on trees. However, it was not clear when the photographs were taken or where on the site they were taken. Exhibit 17 was submitted after the hearing, showing dates ranging from 2014-16, and 2019. Mr. Chandler did not identify in testimony or by photograph which trees with irregularities were cut and where. Under Department questioning, Mr. Chandler confirmed he does not have the education or experience to classify the trees as diseased or hazard trees, and no arborist testified or provided a report.
 11. To be exempt from permitting, simply having growth irregularities is not enough. The tree must also present a threat to a structure, road, or utility facility, or to emergency access.⁸ The site is 3.3 acres and much of the clearing occurred a significant distance from the access driveway and residential structures. According to Mr. Chandler, the site is about 200 feet across, so trees closer to the structures and access road, and with structural defects, likely included hazard trees. But, given the large areas cleared, not all trees removed were hazard trees.

⁴ KCC 21A.08.030B7; IBC 105.1, 114.1.

⁵ KCC 21A.08.030B7; IBC 105.1, 114.1.

⁶ Exhibit 5; Testimony, Ms. Whalen.

⁷ KCC 16.82.051.

⁸ KCC 21A.06.1331.

12. Code Enforcement established that cumulatively, over 7,000 square feet of land on this site was cleared without a permit. It is probable that the cleared areas included hazard trees and blackberry bushes, but due to the extent of the clearing, the Department demonstrated the areas cleared were primarily vegetated with trees, and not all trees were hazard trees. The areas cleared exceeded exempt amounts.⁹
13. **Conversion into Habitable Space (Garage).** The accessory building/garage was not originally constructed for habitation, but was later converted to residential use.¹⁰ The parties disputed the timing of the conversion. Assessor records from 1978 and 1984 identify the structure as a loft over detached garage, but do not identify a living space as being present.¹¹ Mr. Chandler viewed the term "loft" as referring to a living space, while the Department explained the terminology the Assessor uses would be accessory dwelling unit or living quarters. While the precise date of conversion is not known, building permits were not obtained and are required.
14. **Conversion into Habitable Space (Basement).** The basement was converted into habitable space. As with the accessory building, conversion timing was disputed. Assessor records indicate that early on some areas of the basement had been finished.¹² It was not until a number of years later that the Assessor records identify the entire basement as completed, changing the finished area from 180 to 1,330 square feet, including an added bathroom and fireplace. Notes from October 15, 2007, state, "basement changed from 180 sf fin to 1330 and added existing 3/4 bath and fireplace opening; removed 2 basement BR's as these rooms do not have windows...."¹³ As building permits were not obtained for the conversion, these are required.
15. **Conversion Timing.** When the accessory building and basement were converted was disputed. Mr. Chandler did not have an exact date on conversion timing, but presented photographs, testimony, and declarations to support his position that the spaces were living quarters in 1972, when his parents purchased the home.

The photographs do not provide enough detail to confirm what was converted and when, and the declarations, while providing greater detail, still leave unclear exactly when the conversions occurred. Also, as the declarations were in writing, though two were sworn, the individuals did not provide live testimony, so were not subject to cross examination. The Department demonstrated residential use of the two structures was not permitted with the original 1963 residence, with the basement and accessory structure only later converted to living quarters without required permits, after 1972.

⁹ Only the non-exempt clearing requires permitting.

¹⁰ Exhibit 9 (pre-1973 records; the home was originally constructed in 1963); Testimony, Officer Whalen.

¹¹ Exhibit 10, last page, *see also* pages 1-5 with photos of the detached garage from March 14, 1984; Testimony, Officer Whalen. (Exhibit 9 contains pre-1973 Assessor records; Exhibit 10 contains post-1972 records; Exhibit 11 contains later computerized records).

¹² Exhibit 9, which contains pre-1973 records, show no portion of the basement as being finished. Exhibit 10, last page, which contains post 1972 records, depicts two bedrooms, but only an area of 10 x 18 (180 square feet) as being finished. Testimony from Officer Whalen elaborated on these details.

¹³ Exhibit 11, pg. 6; Testimony, Officer Whalen.

16. **Life Safety.** There are life and safety concerns associated with a structure not evaluated for fitness for residence.
17. **Code Enforcement History.** The code enforcement process has been somewhat acrimonious, with Mr. Chandler alleging trespass by code enforcement, and inviting a Councilmember to the site to resolve the matter.
18. When questioned by Mr. Chandler, Ms. Breazeal provided credible testimony that the County's code enforcement procedures were followed. The case was opened in 2015, and Officer Breazeal made two site visits.¹⁴ The first visit was in February of 2016.¹⁵ On the first visit, there was no discussion with Mr. Chandler. She entered the site, left a card at the door, and left.¹⁶ Two photographs were submitted (Exhibit 6) which were taken that day, documenting readily apparent site conditions. At the second site visit, Mr. Chandler was present.¹⁷ Officer Breazeal knocked on the front door and spoke to an individual who stated he was a tenant. The tenant informed her that Mr. Chandler did not live there, and was in the back, in the garage. That was the only time Ms. Breazeal spoke to Mr. Chandler at the site.¹⁸ During these two visits, Ms. Breazeal confirmed in testimony that she did not wander around the property and did not crawl around in the bushes, as Mr. Chandler had alleged. Additional photographs were taken of the site (Exhibits 7 and 8), but Ms. Breazeal did not enter the site to take them, instead taking them from two adjacent properties, while standing on the natural topography. Ms. Breazeal explained that in investigating the alleged code violations, she adhered to the County's protocols, which she had been trained on.
19. Mr. Chandler did not identify any code provision which had not been followed, although King County has adopted code enforcement standards, which include procedures on property entry.¹⁹ Portions of Mr. Chandler's testimony regarding the alleged number of site visits and manner of inspection (crawling in the bushes), was considerably less credible than the Department's testimony on how it approached its investigation.
20. Mr. Chandler believed this matter had been previously adjudicated. He stated he had approached the County Council and spoken with a Councilmember who he testified had visited the site and he believed everything had been resolved. Officer Breazeal explained that while she was aware there had been communications with the Council, she was not aware that the site visit had been completed until Mr. Chandler so stated. Also, she was never directed to stop enforcement. Regardless, Councilmembers lack enforcement authority, and the matter was processed in the standard way.

¹⁴ Mr. Chandler believes there were five or six visits. However, his recollection of the time frame and nature of the visits in his testimony was unclear. Ms. Breazeal had taken notes on the timing and substance of her visits, which she used to refresh her memory, and the facts and timeline she presented was credible.

¹⁵ Mr. Chandler looked to a form with a 2014 date as evidence of an earlier site visit, but Officer Breazeal explained that was the date the form was created, not the date it was signed.

¹⁶ See Exhibit 14 (business card), submitted by Mr. Chandler.

¹⁷ There were multiple complaints about the property, some raising other issues, which are not before the Examiner. Testimony, Officers Whalen and Breazeal; Exhibit 12.

¹⁸ She spoke with him twice at the Department's offices, when he came in.

¹⁹ See e.g., KCC 23.02.060.

DECISION:

The Examiner denies the appeal and requires that the permit processes outlined in the Notice of Violation be completed, except the initial deadlines shall run from the date of the Decision. In summary:

1. **Violation 1 (Clearing of Vegetation):** Submit a pre-screening meeting request to the Department within 30 days of this Decision, and a clearing permit application within 30 days of the meeting. Meet all deadlines required to complete the application process.
2. **Violations 2 and 3 (Conversions to Residential Use):** Submit a pre-screening meeting request within 30 days of this Decision. Submit a Health Department application within 30 days of the meeting. If needed, submit a second pre-screening meeting request within 30 days of the Health Department approval. Submit a complete building permit application within 45 days of the permit pre-screening meeting or within 30 days of the Health Department's approval. If applications to approve the use conversions are not submitted, apply to remove the improvements within 30 days of this Decision. For all review processes, meet required deadlines.
3. No penalties shall be assessed against the Appellant or property if these deadlines are met. Though this Decision is final, the Examiner retains limited jurisdiction for 90 days to address questions on deadlines.

ORDERED November 8, 2019.



Susan Drummond
Hearing Examiner pro tem

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.

MINUTES OF THE JULY 25, 2019, HEARING IN THE APPEAL OF WILLIAM CHANDLER, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR151159

Susan Drummond was the Hearing Examiner. Hearing participants were Jeri Breazeal, Bill Chandler, and LaDonna Whalen. A verbatim recording is on file.

These exhibits were offered and entered into the record:

Exhibit no. 1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. 2	Notice and order, issued 0925069041
Exhibit no. 3	Appeal, received April 4, 2019
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Aerial photographs of subject property, dated between 2012 - 2017
Exhibit no. 6	Photographs of subject property, taken by Officer Breazeal, dated February 4, 2016
Exhibit no. 7	Photographs of subject property, taken by Officer Breazeal, dated May 13, 2016
Exhibit no. 8	Photographs of subject property, taken by Officer Breazeal, dated May 20, 2016
Exhibit no. 9	Assessor Records, pre 1973
Exhibit no. 10	Assessor Records, pre 1972
Exhibit no. 11	Current Assessor Records
Exhibit no. 12	Letter from Chandler William, dated June 5, 2018
Exhibit no. 13	Current Property detail from Assessor
Exhibit no. 14	E-mail, rebuttal documents from Appellant, received September 17, 2019
Exhibit no. 15	Photographs from Appellant, received September 17, 2019
Exhibit no. 16	Videos (3) from Appellant, received September 17, 2019

These exhibits were entered into the record on October 10, 2019:

Exhibit no. 17	Appellant: Photographs
Exhibit no. 18	Appellant: Letters with declarations from Bob Tornfelt and Bill Barton

SD/jo

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR151159**

WILLIAM CHANDLER
Code Enforcement 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/interested persons and parties with e-mail addresses on record.

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 November 8, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Breazeal, Jeri

Department of Local Services

Chandler, Bill

Hardcopy

Deraitus, Elizabeth

Department of Local Services

Lux, Sheryl

Department of Local Services

Whalen, LaDonna

Department of Local Services

Williams, Toya

Department of Local Services