

August 21, 2019

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

King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
Telephone (206) 477-0860

[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**SUMMARY ORDER**

SUBJECT: Department of Local Services file no. **ENFR180009**

**JAMES WEST**

Code Enforcement Appeal

Location: [REDACTED] Maple Valley

Appellant: **James West**  
[REDACTED]  
Maple Valley, WA 98038  
Telephone: [REDACTED]  
Email: [REDACTED]

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

The code's default is that a person may not do any clearing or grading without first obtaining a clearing and grading permit from the Department. KCC 16.82.050.B. KCC 16.82.051.C sets out several exceptions, the pertinent ones being: (1) fill that, cumulatively over time, does not involve more than 100 yd.<sup>3</sup> on a single site; (2) adding less than 2000 ft.<sup>2</sup> of new impervious surface; and (3) cumulative clearing less than 7000 ft.<sup>2</sup> Those thresholds do not apply in critical areas or their buffers, meaning work in critical areas or their buffers typically requires a permit even if the quantum of clearing or grading is far less than the numbers quoted above.

Here the Department asserts that James West has exceeded each of those permit-triggering thresholds. The Department also asserts that some of the work was in a wetland/wetland buffer. Mr. West timely appealed.

Mr. West does not dispute that he has added approximately 3756 ft.<sup>2</sup> of asphalt in the last few years. Mr. West’s point is that the area he asphalted was already a graveled, impervious surface. Even accepting as true Mr. West’s assertion that he did not stray beyond the lateral bounds of the pre-existing gravel (i.e. impervious) bed, he still needs a permit. “Impervious” is not a binary, yes/no, distinction. The definition of “new impervious surface” is “the creation of impervious surface or the addition of a more compacted surface such as the paving of existing dirt or gravel.” KCC 9.04.020.KK (emphasis added).

Thus Mr. West added over 2000 ft.<sup>2</sup> of “new impervious surface” and needs to apply for a permit. The purpose of a code enforcement appeal hearing is typically limited to deciding whether or not an appellant’s actions triggered the need for a permit.<sup>1</sup> If we find a permit was triggered, we typically do not wade much further into the matter, leaving that for the lengthier back-and-forth of the permit review process.

Therefore, little benefit seems gained by holding a hearing in the near future. There are other items beyond the asphalt/new impervious surface that we are *not* deciding today, but those are items better worked out through the permitting process. The thresholds are just that—thresholds for when a permit is required. Any fill-adding or clearing formed on Mr. West’s watch will need to be taken into account and addressed during the permit process, but these are not triggers for a *separate* permit application. Similarly, if some of that work occurred in a critical area or critical area buffer, that will need to be addressed and potentially mitigated for, but during that same permit process.

There is a potential that we will need to hold a later hearing to decide, for example, whether some of Mr. West’s work was in a critical area or its buffer. But that record is better developed at a preapplication conference. While a code enforcement hearing typically only involves the enforcement officer and the appellant, as we understand it preapplication conference like this would also typically rope in critical areas staff. Presumably the Department will present, at that preapplication conference, all the information it would have presented in an enforcement hearing, plus maybe even more.

If the parties cannot work out a solution, KCC 20.20.030.D provides that:

At or subsequent to a preapplication conference, the department may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner in the manner provided for a Type 2 permit, as an alternative to proceeding with a complete application. Mailed and published notice of the appeal shall be provided for as in K.C.C. 20.20.060 H. and I.

That could happen *regardless* of whether we hold an enforcement hearing; we could wind up holding two hearings. So, the question today is whether to hold an initial enforcement hearing before a preapplication meeting request is submitted. That seems both a waste of County

---

<sup>1</sup> There are of course, a subset of enforcement hearings that do not involve permits—junk and debris, nonconforming uses, inoperable vehicles, etc. Ours is not one of those.

resources and delays by six weeks or so Mr. West submitting a preapplication meeting request and starting the process to remedy the violation.<sup>2</sup>

We thus **DENY** Mr. West's appeal, finding that he added over 2000 ft.<sup>2</sup> of impervious surface and must apply for a permit. The one caveat is that on a normal permit-related appeal, the appellant bears the burden of proof. However, we make no findings today about extent or character of fill, clearing, or wetlands/wetlands buffers. In a future hearing, the Department would bear the burden of proof on those matters.

By **September 23, 2019**, Mr. West shall submit a complete prescreening meeting request to the Department.

Within **30 days** of that preapplication meeting, Mr. West shall submit a complete clearing/grading permit.

Thereafter, Mr. West shall meet all deadlines for requested information associated with the permit, pick up the permit within the required deadlines, and obtain all final permit approvals within a **one-year timeframe** (unless otherwise noted).

Alternatively, if at or subsequent to that preapplication conference the parties reach a loggerhead, Mr. West shall promptly request that the Department issue an appealable preliminary determination, which Mr. West shall timely and properly appeal.

The Department shall not assess penalties provided Mr. West meets the above deadlines and requirements. If not, the Department may assess penalties retroactive to today.

If for some reason we have misunderstood the situation, either party free, until **September 16, 2019**, to move that we reconsider today's order.

DATED August 21, 2019.



---

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.

---

<sup>2</sup> We typically schedule hearings about four weeks out, as the parties need about two weeks to prepare their exhibits and other materials, and those materials are due two weeks before the hearing. And then an examiner gets two weeks after the close of the hearing to issue a decision. Our decision today advances the ball about six weeks.

August 21, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**  
King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
Telephone (206) 477-0860  
[hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services file no. **ENFR180009**

**JAMES WEST**  
Code Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** 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 August 21, 2019.



---

Jessica Oscoy  
Legislative Secretary

**Breazeal, Jeri**

Department of Local Services

**Deraitus, Elizabeth**

Department of Local Services

**Lux, Sheryl**

Department of Local Services

**Sawin, Holly**

Department of Local Services

**West, James**

Hardcopy

**Williams, Toya**

Department of Local Services