

April 1, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
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Seattle, Washington 98104
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR180809**

CHARLES AND LYNELL MATSEN
Code Enforcement Appeal

Location: 2717 291st Avenue NE, Carnation

Appellants: **Charles and Samuel Matsen**
15724 May Creek Road
Gold Bar, WA 98251
Telephone: (425) 770-0036
Email: sam@rainyseattle.com

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

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	March 26, 2019
Hearing Closed:	March 26, 2019

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS:

1. Charles and Lynell Matsen are record owners of parcel no. 1925079031 located in the RA-5 zone in unincorporated King County near Carnation, the address of which is 2717 291st Avenue NE. (Property). Lynell Matsen is deceased. Ex. 3.
2. On October 9, 2018, in response to a complaint that clearing had been conducted on the Property without permits, the Department of Permitting and Environmental Review (DPER), now the Department of Local Services, Permitting Division (Department), issued a notice to the Matsens that a complaint had been received (Violation Letter 1). The letter was returned. Ex. 1; testimony of Officer Whalen.
3. On October 25, 2018, Officer LaDonna Whalen conducted a site visit. She did not observe any recent clearing. However, she was able to determine that clearing that had occurred between 2013 and 2015 by reviewing historical aerial photographs. Exs. 1 and 5; testimony of Officer Whalen. She also observed several vehicles that appeared to be inoperable and parked on surfaces that are not impervious. Ex. 6, page 2; testimony of Officer Whalen
4. On October 26, 2018, the Department sent the Matsens a letter (Violation Letter 2) advising them of the alleged violations. This letter was also returned. Ex. 1; testimony of Officer Whalen.
5. On December 11, 2018, the Department issued a Notice and Order to the Matsens alleging: (1) clearing of vegetation in excess of a cumulative area of 7,000 square feet without a permit in violation of cited provisions of the King County Code (Code); and (2) an accumulation of inoperable vehicles and vehicle parts on the premises and parking/storage of vehicles on non-impervious surfaces in violation of cited provisions of the Code. The Notice and Order also contained a note advising of the definition of impervious surface and that only vehicles registered to the property resident(s) may be stored on the site. Ex. 2. The Department sent the Notice and Order to the Matsens by certified mail. The certified mail was returned by the post office. Ex. 1; testimony of Officer Whalen.
6. Officer Whalen posted the Notice and Order at the entrance of the Property on December 12, 2018. Ex. 1. Brothers Samuel and Charles Matsen (Appellants) timely appealed the Notice and Order.

Violation 1 (Clearing in excess of 7,000 square feet)

7. With regard to alleged Violation 1, Appellants contend in their appeal statement that some of the clearing they conducted was exempt from the requirement for a clearing and grading permit and the remaining clearing totaled fewer than 7,000 square feet. They also ask whether the 7,000 square foot limit is an annual limit. Ex. 3.
8. When undertaken outside of critical areas and their buffers, with certain exceptions not relevant in this matter, a clearing or grading permit is not required for cumulative clearing of less than 7,000 square feet, hazard tree removal, and removal of noxious weeds. KCC 16.82.051.B, Note 3 (7,000 square foot cumulative limit); KCC 16.82.051.B, Note 25 (hazard trees), and KCC 16.82.051.B (noxious weeds). Clearing in excess of the 7,000 square foot threshold requires a clearing or grading permit. KCC 16.82.051.B, Note 3.
9. As Officer Whalen explained in the hearing in this matter, the 7,000 square foot limit is a cumulative limit over time. It is not an annual exemption.
10. In response to Appellant’s questions regarding the availability of an annual exemption, Officer Whalen explained that KCC 16.82.051.B, Note 7 allows cumulative clearing of invasive vegetation of less than 7,000 square feet annually. Appellants do not contend that they cleared invasive vegetation.
11. KCC 16.82.020.D defines clearing as “the cutting, killing, grubbing, or removing of vegetation or other organic material by physical, mechanical, chemical or any other similar means.”
12. Ex. 5, page 1, contains a 2013 aerial photograph on which Officer Whalen marked the area that had been cleared in 2013, approximately 9,694 square feet. Thus, as of 2013, the cumulative clearing of 7,000 square feet permitted without a permit had already occurred. Any additional non-exempt clearing requires a clearing and grading permit.
13. Ex. 5, page 1 also contains a 2015 aerial photograph on which Officer Whalen has marked the area cleared in 2015, approximately 27,438 square feet. Thus, unless the additional clearing consisted entirely of exempt clearing activities, a clearing and grading permit was required.
14. In their appeal statement, Appellants contend that they removed noxious weeds, including scotch broom and Evergreen blackberry. At the hearing in this matter, Samuel Matsen corrected this statement. Appellants did not remove scotch broom, but rather foxglove due to a concern that it contains digitalis.
15. KCC Chapter 16.82 does not define noxious weeds. KCC 21A.06.815 defines “noxious weed” as “a plant species that is highly destructive, competitive, or difficult to control by cultural or chemical practices, limited to any plant species listed on the state noxious weed list in Chapter 16-750 WAC, regardless of the list’s regional designation or classification of the species.” Evergreen and Himalayan blackberry are both Class C noxious weeds. WAC 16-750-015. Therefore, removal of blackberries did not require a

clearing and grading permit. However, foxglove is not included in the state noxious weed list.

16. It is also evident from the aerial photographs in Ex. 5 that the area cleared between 2013 and 2015 included in number of trees. Ex. 6, page 1, provides photographs of the vegetation surrounding the cleared area in 2018 demonstrating that it includes a variety of vegetation, not exclusively blackberries.
17. Appellants testified that much of the area cleared between 2013 and 2015 had originally been cleared and improved as a road turn around in conjunction with the construction of the residence in the late 1970s. Exs. 7 and 8; testimony of Samuel Matsen. Samuel Matsen testified that he had driven on the road as recently as the early 2002-2003, at which time the road was essentially two tire tracks with vegetation growing between the tracks. Appellants also submitted an aerial photograph from 2007 in which a portion of the road turnaround is visible.
18. However, as is evident in Ex. 5, the road turn around has not been maintained and by 2013 was not discernible in the aerial photographs. Officer Whalen testified that the Department considers areas which are not maintained to be abandoned, requiring a clearing and grading permit to remove vegetation in the abandoned area.
19. The Department has no record of clearing and grading permits for the Property. Exhibit 1; testimony of Officer Whalen.

Violation 2 (Inoperable vehicles and vehicles stored on non-impervious surfaces)

20. Appellants do not contest alleged Violation 2; they request more time to bring the Property into compliance. However, at the hearing in this matter, Samuel Matsen testified that 30 days should be sufficient to achieve compliance.
21. Appellants interpret the note regarding vehicles which may be stored on the site as a prohibition on visitor parking and parking of service vehicles. Officer Whalen clarified at the hearing in this matter that residents of the Property may park on the property so long as the vehicle is in a garage, carport, or on an approved impervious surface. KCC 21A.18.110.I. See also, KCC 21A.06.020.H, which permits as an accessory residential use the storage of private vehicles.
22. With regard to parking of vehicles on non-impervious surfaces, Appellants ask whether they may park vehicles on areas which were once graveled and are now grown over with grass. Ex. 3. At the hearing in this matter, Officer Whalen clarified that prior Hearing Examiner decisions have interpreted graveled areas which have grown over are considered impervious surfaces.
23. Any Finding which should more properly be considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS:

1. Any Conclusion of Law which should more properly be considered a Finding is hereby adopted as a Finding.
2. In an enforcement case, the Department bears the burden of proving the alleged violation by a preponderance of the evidence. Hearing Examiner Rules of Procedure and Mediation, Rules XV.E.2 and XV.F.1.
3. The Department has demonstrated by a preponderance of the evidence is that Appellants cleared more than a cumulative 7,000 square feet outside of critical areas and their buffers without the required clearing and grading permit.
4. Appellants do not contest alleged Violation 2, the storage of inoperable vehicles and vehicle parts on non-impervious surfaces.

DECISION:

1. The Matsens appeal is DENIED.
2. No penalties shall be assessed against the Appellants or the subject property if the following actions are completed **by the deadlines set forth below**.
 - A. Apply for and obtain the required permits, inspections, and approvals with complete application to be submitted **by the following schedule**:
 - i. Submit a complete pre-application meeting request to the Department **by May 1, 2019**.
 - ii. Submit a complete clearing permit application **within 30 days of the pre-application meeting**.

Note: Application for a permit does not ensure that a permit will be issued. The applicant should be aware that permit fees can be expensive and zoning or critical area restrictions may require a variance or reasonable use exception to county regulations in order to legalize work done without permits. Application for a variance or reasonable use exception can be an expensive and time consuming option and there is no guarantee that approval will be obtained. The alternative is to obtain a clearing/grading permit to restore the site to its original condition or as close to that condition as possible.
 - iii. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) **within the required deadlines**. Make any required corrections and obtain final inspection approval **within one year** of permit issuance.

- B. Remove the inoperable vehicles and vehicle parts from the premises or store these materials within a fully enclosed building, and cease parking/storage of vehicles on non-impervious surfaces **by May 1, 2019**.

ORDERED April 1, 2019.

Alison Moss
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 MARCH 26, 2019, HEARING IN THE APPEAL OF CHARLES AND LYNELL MATSEN, DEPARTMENT OF LOCAL SERVICES, PERMITTING DIVISION FILE NO. ENFR180809

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Samuel Matsen, and Charles Matsen.

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit no. 1 | Department of Local Services, Permitting Division staff report to the Hearing Examiner |
| Exhibit no. 2 | Notice and order, issued December 11, 2018 |
| Exhibit no. 3 | Appeal, received January 2, 2019 |
| Exhibit no. 4 | Codes cited in the notice and order |
| Exhibit no. 5 | Aerial photographs of subject property, dated 2013, 2017, and 2017 |
| Exhibit no. 6 | Photographs of subject property, dated on October 25, 2018 |
| Exhibit no. 7 | Appellants' talking points |
| Exhibit no. 8 | Aerial photograph of subject property with Appellants' calculations, dated 2018 |
| Exhibit no. 9 | Aerial photograph of subject property, dated 2007 |
| Exhibit no. 10 | KCC 21A.06.020 |

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April 1, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR180809**

CHARLES AND LYNELL MATSEN
Code Enforcement Appeal

I, Liz Dop, 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 April 1, 2019.



Liz Dop
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Deraitus, Elizabeth

Department of Local Services

Lux, Sheryl

Department of Local Services

Matsen, Charles/Samuel

Hardcopy

Whalen, LaDonna

Department of Local Services

Williams, Toya

Department of Local Services