

September 24, 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
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR190069**

ALI HERAVI AND MAH FOUNDATION LLC
Code Enforcement Appeal

Location: [REDACTED] Woodinville

Appellant: Ali Heravi
represented by **Nathan Neiman**
MAH Foundation, LLC
PO Box 777
Redmond, WA 98073-0777
Telephone: (425) 881-3680
Email: nneimail@aol.com

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

FINDINGS AND CONCLUSIONS:

Overview

1. On July 9, 2019, the Department of Local Services (Department) served a notice and order (Order) alleging violations related to a vacant outbuilding and also to timber slash piles. The Order required the building be fenced off and the slash piles removed or disposed within 30 days. Ali Heravi and MAH Foundation LLC (Appellants) timely challenged this on July 26.

2. We went to hearing on September 10. Unless directed to by law—and no special directive applies to today’s case—we do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement to an enforcement action, the Department bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.2.
3. After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, we deny the appeal as to both violations and as to the need to secure the building within 30 days, but we extend the compliance deadline for the slash heaps until the spring.

Building

4. At some point circa 2014, a tree smashed through Appellants’ carport. Appellants assert there is no evidence or observation that the structure has changed since the initial 2014 damage. Ex. 3 at 008. This is demonstrably incorrect. The aerials show that, after the initial circa-2014 damage, the front part of the carport collapsed circa 2017. Comparing the 2019 aerials with the 2017 photo shows that the collapse along the middle of the building is progressing still further east, with the collapse now extending all the way to the edge of the eastern wall. *Compare* Ex. 6 at 002 (top photo) *with* bottom photo on 002 and photos on 003.
5. We have previously tackled disputes over whether a currently-intact building is a hazard because of indicators it *might* partially (or totally) collapse in the future. There is no need to look into a crystal ball here. This carport *already* partially collapsed circa 2014, further collapsed circa 2017, and the collapse appears to be advancing in 2019.
6. In its Order, the Department cited six code sections. Two have not been violated, two likely have, and two definitely have.
7. KCC 16.14.160 involves:

Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

Although it is broader than just traditional equipment—it can include electrical wiring—there is no evidence in the record about anything other than the structure itself, and its partial collapse. There is no violation of KCC 16.14.160.

8. Similarly, KCC 16.14.180 requires that:

Additions, alterations or repairs to any structure shall conform to that required for a new structure without requiring the existing structure to comply with all of the requirements of this code, unless otherwise stated.

Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building.

Section .180 speaks to activity—additions, alterations, or repairs. Here it is the *lack* of any activity, post-partial collapse, which is the problem. Simply allowing a building to exist in its unsafe and damaged state is not an “alteration.” It has and may continue collapsing, but .180 is targeted at activity, not inactivity. There is no violation of KCC 16.14.180.

9. KCC 16.14.100 makes it:

unlawful for any person, firm or corporation whether as owner, lessee, sublessee, or occupant, to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done, contrary to or in violation of this code or any order issued by the code official hereunder....

On first blush this sounds like a repeat of .180, targeted at activity. However, there is one critical difference: the list includes “maintain.” Appellants maintain a carport on their property. Although a crumbling building is not the thrust of .100, section .100 is applicable, and—given the code sections discussed below—violated.

10. Similarly, KCC 16.14.170 states that:

A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

Appellants assert that .170 is only to be applied to structures intended for human occupancy. Even assuming only certain buildings that people walk in need to be safe and that, for example, a storage shed could be completely unsafe and yet not a building code violation, carports are not in the same category as storage sheds. For example, KCC 16.02.240(2) exempts storage sheds under a certain size from needing a building permit, but explicitly states that this exemption does *not* include buildings used for vehicular storage. The outcome here does not turn on whether .170 is applicable or not, but .170 likely applies to a carport. Under that reading, the partially-collapsed carport is unsafe and violates .170.

11. While the previous two codes are open to interpretation, there is no real question that the carport violates KCC 16.14.150, which states that:

An unsafe structure or premise is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn

occupants in the event of fire, or because such structure or premises contain unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

As noted above, the property is so damaged that partial collapse is not only possible, it has already occurred and has even progressed since the initial 2014 incident. As the exposed structure continues to decay, further or even complete collapse is possible (though not necessary to sustain the violation). The Department has met its burden of proving a .150 violation.

12. It also violates KCC 16.14.140, which states that:

When a structure, equipment or premises are found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure, equipment or premises shall be condemned pursuant to the provisions of this code.

Again, the carport has *already* suffered a partial collapse, and this collapse has expanded since the initial 2014 incident. It is unsafe and also unfit for human occupancy, and (given the other violations we sustain) unlawful.¹

13. As to the remedy, the Order requires not demolition but only a 6' chain-link fence or similarly sturdy barrier (as compared to chicken wire or plastic) to secure the "premises" from entry. Ex. 2 at 001. There was some testimony at hearing about holes in, and the sufficiency of, the fence running along the entire property's perimeter. *See also* Ex. 5 at 003. That question is largely moot, because the driveway has only a single cable stretched across it. Ex. 10 at 002. Appellants can attempt to secure to entry the entire perimeter of the whole parcel, but a far simpler solution is attaching a 6-foot chain-link fence against one of the still-standing walls of the carport, looping the fence around the entire exposed areas, and securing it to the still-standing wall on the opposite side. The mechanics are largely Appellants' choice, but the carport needs to be secured from entry within 30 days and then kept secure until it is repaired or demolished and removed.

Slash Piles

14. In 2017, Appellants obtained a forest practices permit and a contractor cleared a swath of the property. Ex. 7. The clearing occurred, and the debris was piled into approximately seven huge slash piles for disposal. However, things broke down with the contractor and the piles were not removed, burned, or chipped down and dispersed. Appellants and the contractor are apparently headed to binding arbitration in November to sort responsibility out.
15. The Order asserts that these piles violate KCC 16.14.460, which reads:

¹ Because .140 uses the disjunctive "or," anyone of those three items would, standing alone, be sufficient.

Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion Fire Marshal or the Code Official, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause shall be considered substandard. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice violation, they shall be subject to prosecution in accordance with the provisions of K.C.C. Title 23.

The huge piles of vegetation are likely combustible, and certainly are ready fuel to a pre-existing fire. So there is a violation.

16. However, the fire hazard only exists during fire season. The piles are not problematic today, after the rainiest summer we can recall, and on the cusp of what in even dry years would be the beginning of the rainy season. They will become a hazard again during the 2020 fire season, but that is a ways off. If this year—when King County and other counties instituted burn bans on May 8, <https://waburnbans.net/recent-burn-bans/king/>—is any barometer, there seems little harm in giving Appellants through the end of April to get rid of the piles. This should also give Appellants and the contractor time to finish arbitration to sort out who is responsible for what.

DECISION:

1. We DENY Appellants' appeal as to the carport. Appellants shall secure the carport to entry by **October 24, 2019**. Appellants shall advise the Department when this is completed and provide photographs.
2. We DENY Appellants' appeal as to the slash piles. However, we extend the deadline for disposing of these materials until **April 30, 2020**. Appellants shall advise the Department when this is completed and provide photographs.
3. The Department may not assess penalties against Appellants or the subject property if compliance is achieved by those deadlines or by any deadline extensions the Department reasonably grants to those deadlines. If not, the Department may assess penalties retroactive to today.

ORDERED September 24, 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.

MINUTES OF THE SEPTEMBER 10, 2019, HEARING IN THE APPEAL OF ALI HERAVI AND MAH FOUNDATION LLC, FILE NO. ENFR190069

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Nathan Neiman, LaDonna Whalen, and Ali Heravi. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Department staff report to the Hearing Examiner
Exhibit no. 2	Notice and order, issued January 13, 2017
Exhibit no. 3	Appeal, received February 23, 2017
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Photographs of subject property, by Officer Whalen
Exhibit no. 6	Aerial photographs of unsound structure, dated 2013-2019
Exhibit no. 7	Forest Practice Permit no. 2719372, received September 8, 2017
Exhibit no. 8	Aerial photographs of debris piles
Exhibit no. 9	Email from Neiman, Photographs, sent August 26, 2019
Exhibit no. 10	Aerial photographs from Neiman, dated August 23, 2019
Exhibit no. 11	Aerial photographs from Neiman, dated August 26, 2019

DS/jo

September 24, 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
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR190069**

ALI HERAVI AND MAH FOUNDATION LLC
Code Enforcement Appeal

I, Jessica Oscoy, 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 September 24, 2019.



Jessica Oscoy
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Deraitus, Elizabeth

Department of Local Services

Heravi, Ali

MAH Foundation, LLC

Hardcopy

Lux, Sheryl

Department of Local Services

Neiman, Nathan

MAH Foundation, LLC

Hardcopy

Whalen, LaDonna

Department of Local Services

Williams, Toya

Department of Local Services