

March 24, 2020

**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. **E0801331**

ROBERT AND CARLA LACHER
Code Enforcement Appeal

Location: [REDACTED] North Bend

Appellants: **Robert and Carla Lacher**

[REDACTED]
North Bend, WA 98045

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by LaDonna Whalen
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
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FINDINGS AND CONCLUSIONS:

Overview

1. This is a case with no great solutions. Over the years, Carla Lacher (later with her husband, Robert) undertook several construction projects without obtaining the necessary permits. In December 2019, the Department of Local Services (Department) served a notice and order, asserting building-related violations and requiring permit applications. The Lachers timely appealed in January, and we went to hearing earlier this month. After listening to 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 but significantly extend compliance deadlines.

Background

2. In the 1980s, Ms. Lacher moved into a cabin that had relatively recently been constructed by the previous owner.¹ That owner had not obtained the necessary permit approvals. In the late 1980s, Ms. Lacher remodeled the cabin to add a bathroom at one end and a dining area on the other end. Someone complained in 1989, prompting the Department to open a code enforcement action. Ms. Lacher dutifully applied for a permit at the end of that year. The Department issued the permit in 1990 and closed the code enforcement case. How things broke down after that point is a little unclear. Ms. Lacher says she never received the permit. The record does not show any other action until 1995, when the Department canceled the permit for lack of an inspection request. Ex. 9 at 001.
3. Earlier in the 1990s, Ms. Lacher added a garage, also without permits. Ex. 12 at 002, 006.
4. In about 2008, the Lachers undertook more construction to accommodate Mr. Lachers' condition, building a bedroom with an upstairs bathroom. The Department received a new complaint and picked up the dormant thread from the original complaint. Ex. 7. There was some back-and-forth with the Department, but nothing conclusive happened.
5. In 2013, the Department received an additional complaint regarding yet more construction, this time converting the garage to living space and adding a second floor, also without permits. There was still no conclusive action. Finally, in 2018 a new enforcement officer picked up the case and attempted to bring the ship into shore. Ex. 1 at 002.
6. The Lachers hired consultants to help them navigate the permit process. In February 2019, their first consultant submitted a prescreening meeting request packet on the Lachers' behalf, detailing the various work the Lachers undertook over the years. Ex. 12. A different consultant attended a preapplication meeting with the Department in May and received an explanation of what was required. (The Lachers did not attend that meeting, and it appears there has been less than stellar communication between them and their consultant, resulting in some of the Lachers' confusion.)
7. In early August, the second consultant submitted a plan of attack and suggested deadlines, starting with submitting a septic/water application to Public Health by September 2019. Ex. 11 at 001. The Department okayed that plan of attack and those deadlines. Ex. 11 at 004. No application was submitted to Public Health in September 2019 (or even by the time of our March 3, 2020, hearing).
8. The Department essentially gave Lachers and their consultant an additional three months past the consultant-requested deadline. When still nothing had been submitted to Public Health, the Department issued a notice and order for violations related to the second residence and garage (violation 1) and the cabin itself (violation 2). Ex. 2. The Lachers

¹ Ms. Lacher thought the previous owner constructed the cabin in the 70s; the Department thought it was constructed in the 80s. That distinction is not relevant to our case. Either of those decades were well after building codes were in place and residences required permits.

timely appealed, but their appeal was limited to wanting a clearer understanding of the infractions, along with assistance and the better understanding a face-to-face meeting would provide. Ex. 3. We got together in person on March 3.

Analysis


9. The Lachers did not contest the existence of the violations, but even if they had, it would not have changed the outcome. Anyone intending “to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure” must “first make application to the building official and obtain the required permit.” KCC 16.02.110; IBC 105.1. There are some limited exceptions to this blanket permit requirement, KCC 16.020.240, but none of those are applicable to either the original cabin construction, the expansion to the cabin, the new garage, or the second expansion and conversion.
10. There was discussion at hearing about whether some of the construction was built into property setback lines or even onto an adjoining parcel. Ex. 15 at 006-007. We make no findings on that. The building permit review phase would be the time to dig into the meat of that. The violations, and need to address those violations, we discuss today are not dependent on any finding that some setback or property line has been encroached upon.
11. We do know that a property survey will be one of the items required in a building permit application submittal here. A survey will take some time to arrange, significantly more time than arranging it would have taken prior to the pandemic. Starting that process sooner rather than later should help the Lachers in the long run.
12. As to what those deadlines should be, while the lack of even basic permit review for something like life-safety is troubling, this enforcement action has been open since the late 80s. One cannot really say that time has been of the essence thus far.
13. The Department representative testified that she would send an additional copy of the Public Health permit application form to the Lachers. Having reviewed those forms, her assessment—that getting that initial application into Public Health should be straightforward—seems accurate. All the back-and-forth that often accompanies a permit application may take time, but the first applicable deadline is pegged to an *application* to Public Health, not to a deadline for when Public Health must issue an approval. At hearing we noted that we would extend the Department’s requested 30-day deadline to 45 days.
14. We are already three weeks past our hearing. However, given the increasing pandemic-related restrictions, including the Governor’s order of last night, it may be some time before business-related travel can even take place. Thus, we will double (to 90 days) the 45-day deadline we said at a hearing we would set, meaning that the Public Health application will effectively be due 111 days after our March 3 hearing. The second step the notice and order lists—applying for a building permit application—is pegged to 30 days after Public Health approval. We will triple that to 120 days. (We know now that a survey will need to be included with that building permit application.)

15. It is important for the Lachers to meet those deadlines. If not met, monetary penalties can be severe. Here, the fine for the first month would be \$4,350, and double for the second month, for a whopping \$13,050, two-month total. Ex. 2 at 003. And “[p]ayment of the civil penalties assessed under the notice and order does not relieve a person found to be responsible for code compliance of that person’s duty to correct the violation....” KCC 23.24.020.E. So civil penalties would only add to the eventual burden, not be an alternative route for resolving this matter.
16. We will write in authority for the Department to extend the deadlines. But it is important for the Lachers to get started now, and to document their efforts. One imagines it would be much easier for the Lachers to justify a future extension request if they can document, for example, “On March __, we began [soliciting surveyors, filling out the Public Health application form, etc.]. On April ____, we....,” rather than ramping up closer to the deadline and then expecting a last-minute reprieve if complications arise.
17. Finances were tough for the Lachers before the pandemic struck. And with the recession, finances will grow only tighter. Here the Department agreed to use the minimal housing exemption, a less stringent (and less expensive) standard of review than that applied to a normal building permit application. Ex. 11. The Lachers may also want to request a fee reduction from the Department as they gear up to apply for their building permit application (post-Public Health approval). However, we do not control that process or its outcome.

DECISION:

1. We deny the Lachers’ appeal.
2. We sustain the Department’s December 30, 2019, notice and order except that:
 - A. By **June 22, 2020**, the Lachers (or a consultant) shall submit a complete application to Public Health and shall email a copy of that application to the Department.
 - B. Within **90 days** of Public Health approval, the Lachers (or a consultant) shall submit a complete building permit application to the Department.
3. The Department may not assess penalties against the Lachers or the subject property, so long as the above deadlines, and the remaining deadlines contained in the notice and order, are met. If those deadlines—and any extensions those deadlines the Department reasonably allows—are not met, the Department may issue penalties retroactive to today.

ORDERED March 24, 2020.



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 MARCH 3, 2020, HEARING IN THE APPEAL OF ROBERT AND CARLA LACHER, DEPARTMENT OF LOCAL SERVICES FILE NO. E0801331

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Carla Lacher, and Robert Lacher. 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 of Local Services staff report to the Hearing Examiner
Exhibit no. 2	Notice and Order, issued December 30, 2019.
Exhibit no. 3	Appeal, received January 22, 2020
Exhibit no. 4	Codes cited in the Notice and Order
Exhibit no. 5	Photographs of subject property, dated February 26, 2015
Exhibit no. 6	Letter from Ms. Lacher to Ms. Wood
Exhibit no. 7	Aerial photographs of subject property
Exhibit no. 8	DLSP Record no. E89C1053
Exhibit no. 9	DLSP Record no. R8914200
Exhibit no. 10	Aerial photograph of property, taken in 2002
Exhibit no. 11	Puget Sound Permits timeline
Exhibit no. 12	Already-Built-Construction pre-screening meeting application
Exhibit no. 13	Department assessment no. 0723099055
Exhibit no. 14	King county IMAP
Exhibit no. 15	Parcel Map with photographs

DS/jo

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **E0801331**

ROBERT AND CARLA LACHER

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 March 24, 2020.



Jessica Oscoy
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Deraitus, Elizabeth

Department of Local Services

Lacher, Robert & Carla

Hardcopy

Lux, Sheryl

Department of Local Services

Whalen, LaDonna

Department of Local Services

Williams, Toya

Department of Local Services