

March 5, 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

SUMMARY ORDER

SUBJECT: Department of Local Services file no. **ENFR180976**

DAVID AND BRITTNEY DUNNAVAN

Code Enforcement Appeal

Location: [REDACTED] Redmond

Appellants: David and Brittney Dunnavan
represented by **Jane Ryan Koler**
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King County: Department of Local Services
represented by **LaDonna Whalen**
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On August 16, 2018, the Department served a violation notice (“Notice”) against the Dunnavans, related to clearing a past owner had undertaken without a permit. The Department recorded the Notice against the Dunnavans’ title and gave the Dunnavans 30 days to submit a prescreening request, lest they face penalties of \$40 per day for the first 30 days, and then \$80 per day thereafter.

Appellants followed the process, culminating in submitting a permit application on November 22, 2019. The Department deemed the application complete on November 27. At yesterday’s conference, the Department explained that it only routed the complete application to reviewers two months *after* that (i.e. on January 27, 2020). Unsurprisingly, review is not close to complete.

The code sets strict deadline for permit processing. KCC 20.20.100.B.1 requires that “the department shall issue its final decision on a Type 1 or Type 2 decision within one hundred twenty days from the date the department notified the applicant that the application is complete” (underscore added). And KCC 20.20.100.B.2.e revises this downward to 90 days for a clearing and grading permit. Those are mandatory deadlines, not aspirational goals.

Here, the Department apparently chewed up two of its three allowed review months before the permit was even routed for review. The Department has not even made a site visit, yet the Department was, as of yesterday’s conference, already nine days past its final review deadline. And there is nothing indicating that this case is anything beyond the garden-variety, clearing-in-a-critical-area/buffer violation that we entertain day in day out.

Aside from the normal concerns failing to meet mandatory code requirements and delaying applicants creates, here the notice on title is preventing the Dunnavans from refinancing. Counsel requested yesterday that the Department rescind the Notice while the Dunnavans continue working through the permit process. The Department rejected that solution. That is unacceptable, given that the Department is currently failing to meet its own code for processing an application to resolve the violation. KCC 20.20.100.B.2.e. We grant counsel’s motion.

We thus DISMISS WITHOUT PREJUDICE the Department’s August 16 notice. We ORDER that by **March 12, 2020**, the Department shall record something on the Dunnavans title rescinding the Notice.

Forward-looking, the Dunnavans are non-culpable property owners. Thus, they are “responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances.” KCC 23.02.130.B. And for “sites that have been degraded under prior ownerships,” the term “remediate” means only to “restore to a condition that does not pose a probable threat to the environment or to the public health, safety or welfare,” not to bring the property up to the condition a culpable property owner could be required to. KCC 23.02.010.M.


We have ruled that those provisions—and the examiner’s discretion to waive “[s]trict compliance with permit requirements” to “avoid doing substantial injustice to a non-culpable property owner,” KCC 23.36.030.B—apply even when the underlying violation involves critical areas; our decisions were not appealed.¹ Hopefully, expectations have been clarified.

If a dispute arises on how to apply “the extent reasonably feasible under the circumstance” or restoring to a condition not posing “a probable threat to the environment or to the public health, safety or welfare” to the Dunnavans’ property, the Dunnavans can proactively raise that via a KCC 20.20.030.D appeal (permit applicant can appeal a preliminary determination to the

¹ Most recently, *ENFR1800998—Morrison* at <https://www.kingcounty.gov/independent/hearing-examiner/case-digest/appeals/code-enforcement/2019.aspx>.

examiner), without both parties having to go through the steps of another code enforcement notice and then an appeal of that notice.

DATED March 5, 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.

DS/jo

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CERTIFICATE OF SERVICE

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DAVID AND BRITTNEY DUNNAVAN
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 March 5, 2020.



Jessica Oscoy
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Deraitus, Elizabeth

Department of Local Services

Dobkins, Doug

Department of Local Services

Dunnavan, David/Brittney

Hardcopy

Lux, Sheryl

Department of Local Services

Ryan Koler, Jane

Law Office of Jane Koler PLLC

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Whalen, LaDonna

Department of Local Services

Williams, Toya

Department of Local Services