

September 18, 2020

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

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**REPORT AND DECISION**

SUBJECT: Department of Local Services file no. **ENFR190132**

**STEPHEN AND BONNIE JONES**  
Code Enforcement Appeal

Location: [REDACTED] Gold Bar

Appellants: **Stephen and Bonnie Jones**

[REDACTED]  
Gold Bar, WA 98251

Telephone: [REDACTED]

Email: [REDACTED]; [REDACTED]

King County: Department of Local Services—Permitting  
*represented by LaDonna Whalen*  
Department of Local Services  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. The Department of Local Services served a notice and order for the unpermitted construction of an accessory structure. Stephen and Bonnie Jones timely appealed. The facts here are not greatly in dispute; the implications of those facts, and how to bring this ship into shore, are thornier. 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, explain paths forward, and extend the original deadlines for coming into compliance.

## Background

2. In late 2013, the Department received a complaint that the then-property owner had constructed an accessory structure without the necessary permits. Ex. D6 at 003 (showing before- and after-construction aerials). The entire property currently sits within the FEMA-demarcated “floodway.” Ex. D5. The Department explained to that owner that because the property was in the floodway, and because new structures are prohibited within the mapped FEMA floodway, the owner would need to get FEMA to amend its maps in order to keep the structure.<sup>1</sup> The owner informed the Department that he would pursue things with FEMA. However, he apparently gave up and sold the property to the Joneses without divulging the illegality of the structure or the pending enforcement matter.
3. The Joneses purchased the property in 2016, unaware that one of their accessory structures was illegal. In 2017, they set about upgrading and expanding the structure, both horizontally and vertically, including angling the roof to account for snow loads. Ex. D6 at 002, 006–08; Ex. D7. From aerial photos, the Department estimates the initial structure was 286 ft.<sup>2</sup> and the Joneses increased the footprint to 609 ft.<sup>2</sup> Compare Ex. D6 at 001 & 003. At hearing, Ms. Jones opined that the original structure was about 300 ft.<sup>2</sup> and the current version is about 500 ft.<sup>2</sup> This minor disagreement on dimensions is not critical to our analysis. If the Joneses can get the green light from FEMA (described below), they can show on a site plan the extent of the structure as they purchased it and as it exists today.
4. In 2019, the Department closed the enforcement case against the previous owner and reopened it with the Joneses. After communications with the Joneses broke down, the Department served a notice and order, alleging construction within an environmentally-critical area or their buffers and without the necessary permits. Exs. D9 & D2. The Joneses timely appealed, asserting that Department should have followed through with the previous owner, that they had no notice when they purchased the property, and that they acted in good faith. Ex. D3.
5. We went to hearing on September 3. Unless directed to by law—and no special directive applies to today’s case—the examiner does 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.

## Analysis

6. There is no question that the past owner’s construction of the structure, as well as the Joneses’ expansion of the structure, required permits. We thus sustain the violation. That is not an indictment on the Joneses, or implying any lack of good faith. It is simply a reflection of the code’s requirements.

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<sup>1</sup> KCC 21A.24.260.C allows some exceptions for farm pads and *agricultural* accessory buildings, but those are not pertinent here.

7. We acknowledge the Joneses' argument that the Department should have been more aggressive with the past owner. In hindsight, perhaps the Department should have served (and recorded against his title) a notice and order, instead of relying on the owner's representations that he was working with FEMA to resolve the matter. The criticism is somewhat a matter of perspective. We frequently entertain the *opposite* complaint, where the Department did record a notice and order against the property's title, and the owner decries being unable to secure a loan to finance engineering or other work necessary to bring the property into compliance, because a lender often will not finance a property having the red flag that the Department's notice on title creates.
8. In any event, the Joneses own the property now and are responsible for bringing it into compliance. Whether they have title insurance recourse would depend on the language of their policy. Ms. Jones noted that they have contacted their title insurance company.
9. The current boulder in the road is the FEMA floodway. Neither the original 2013 structure, nor the expanded 2017 version, are allowed the floodway. KCC 21A.24.260.C. The Joneses have been trying to work with FEMA to obtain a letter of map amendment or revision. Ms. Joneses explained that they hired a surveyor and obtained an elevation certificate; that is good news. Ms. Jones was confident they would be ready within 30 days to apply to FEMA. See <https://www.fema.gov/flood-maps/change-your-flood-zone/loma-lomr-f#request>.
10. If they are successful with FEMA, and FEMA determines that the Jones' property is outside the floodway, the outright new structure prohibition would cease. If FEMA reclassifies the property as in the floodplain, there are still restrictions, but the structure—either in its current or original configuration—may be permissible.
11. The code provides some easing of regulatory restrictions and fees where the owner demonstrates that the action which created the violation was taken without the owner's knowledge or consent. See KCC 23.02.130.B; KCC 23.36.030.B. The standard is not whether the Joneses knew the action about to undertaken be a violation, but whether they had a hand in the action itself. Even without the floodway/zoning restrictions or illegality of the original structure, the work the Joneses' undertook in 2017 by itself triggered the need for a building permit; they do not qualify as non-culpable owners for their work. If they took the structure back to its original configuration, they could qualify as nonculpable owners. However, undoing all that work might create more headaches than it would solve, and the structure would still require a permit. Those are questions to explore with permitting staff, if the Joneses get the FEMA green light.
12. Thus, the Joneses first steps to keeping the structure (either in its original or modified condition) involves submitting a FEMA letter of map amendment/revision, following through with any FEMA requests (such as for more information) or deadlines, and completing FEMA's process. As laid out in the Department's revised schedule, all future deadlines are pegged to the date of FEMA's decision. Ex. D1 at 2–3.

## DECISION:

1. We uphold the County’s March 19 notice and order, except as modified here.
2. By **October 19, 2020**, the Joneses shall apply either:
  - A. to the Department for a demolition permit to remove the structure, or
  - B. to FEMA for a letter of map amendment or revision, sending the Department a copy of the application; then follow through with FEMA’s requests (such as for more information) and FEMA’s deadlines.
3. Within 30 days of FEMA’s decision, submit to the Department:
  - A. a complete prescreening meeting request (if successful getting the property moved out of the floodway); or
  - B. a demolition permit application to remove the structure (if unsuccessful getting the property moved out of the floodway).
4. Thereafter, follow the steps and timeframes set forth in Exhibit D1, subsection E.
5. The Department may not assess penalties against the Joneses or the subject property, if these actions are completed by the applicable deadlines, or by any extensions to those deadlines the Department grants. If not, the Department may assess penalties.

ORDERED September 18, 2020.



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David Spohr  
King County 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 3, 2020, HEARING IN THE APPEAL OF  
STEPHEN AND BONNIE JONES, DEPARTMENT OF LOCAL SERVICES FILE  
NO. ENFR190132**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Bonnie Jones and LaDonna Whalen. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the Department:

Exhibit no. D1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. D2	Notice and order, issued June 19, 2020
Exhibit no. D3	Appeal, received June 30, 2020
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Floodway aerial and FEMA map
Exhibit no. D6	Aerials of subject property
Exhibit no. D7	Photograph taken by Officer Breazeal, dated January 15, 2014
Exhibit no. D8	Photographs taken by Officer Whalen, dated April 1, 2019
Exhibit no. D9	Emails from 2019

The following exhibits were offered and entered into the record by the Appellant:

Exhibit no. A1	Discovery questions and letters from the Department, submitted August 20, 2020
Exhibit no. A2	Rebuttal responses, submitted August 31, 2020

DS/lo

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**CERTIFICATE OF SERVICE**

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**STEPHEN AND BONNIE JONES**  
Code Enforcement Appeal

I, Lauren Olson, 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 18, 2020



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Lauren Olson  
Legislative Secretary

**Breazeal, Jeri**

Department of Local Services

**Jones, Stephen/Bonnie**

Hardcopy

**Lux, Sheryl**

Department of Local Services

**Whalen, LaDonna**

Department of Local Services