

April 22, 2020

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
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www.kingcounty.gov/independent/hearing-examiner

SUMMARY ORDER

SUBJECT: Department of Local Services file no. **ENFR200071**

SEUNG BAIK
Code Enforcement Appeal

Location: 11900 NE 1st Street Unit 300, Bellevue

Appellant: **Seung Baik**

[REDACTED]
Bellevue, WA 98005

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by Jeri Breazeal
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0294
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Overview

The Department of Local Services (Department) issued a notice and order to Seung Baik. Mr. Baik timely appealed. The Department moved to partially dismiss that appeal, noting that several of the violations and requirements were established under an earlier, non-appealed notice and order. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we conclude that we do not have jurisdiction over the original three violations. We extend the timeline for compliance with one of the two new violations and offer commentary on the other. And we provide informal thoughts on next steps for the original three violations, recognizing that this is a case without a great solution.

Background

Seung Baik purchased the subject property with an older home on it. He rolled the dice and undertook a variety of improvements, including adding a new foundation to the house, adding a porch, building a retaining wall, and clearing and grading, all without attempting to first obtain the necessary permits. The permit process would have alerted him to various restrictions and complications such development would trigger. Unfortunately, that did not happen.

Someone observed the work and complained. The Department opened a code enforcement case ENFR18-0501. In June 2018, the Department issued a stop work order related to grading. Ex. 6 at 001. In October, the Department issued a stop work order related to remodeling and an addition. Ex. 6 at 003. The stop work orders were not appealed.

In November 2018, the Department issued a notice and order to Mr. Baik and his corporation, Spark 19. Ex. 7. The order cited three alleged violations: (1) construction of an addition to/structural repair of a residence, (2) clearing and grading, and (3) construction of a retaining wall, all within environmentally critical areas or their buffers. The order set requirements and deadlines. The order noted that an appeal had to be filed by December 2018, or else the order would become a final determination of those violations. No appeal was filed.

Although the exact dates are not in the record, at some point the Department concluded that the requirements and deadlines from the original notice and order were not being met, and it issued Mr. Baik \$18,900 in penalties. These penalties also were not challenged. Mr. Baik quitclaimed the property to another one of his companies in November 2019. Ex. 8. He paid the code enforcement penalties. Ex. 3.

The quitclaim and change in legal ownership prompted the Department to close out ENFR18-0501 and reissue the notice and order to the new ownership, Steve Baik and JYB Property LLC, under a new file number, ENFR20-0071. Ex. 5. The Department added two new alleged violations, (1) the vacant building was open to entry and an attractive nuisance, and (2) an accumulation of rubbish, salvage, and debris. This order relisted the three original violations as (4)(3) construction of an addition to/structural repair of a residence, (2)(4) clearing and grading, and (3)(5) construction of a retaining wall; it provided updated compliance steps for these original items, but it did not list any potential penalties for failing to complete those.

Mr. Baik timely appealed the second notice and order. His appeal challenged the remedy for violations (3) addition to/structural repair and (5) construction of retaining wall (which he listed as “4.”). Ex. 2. The Department moved to dismiss Mr. Baik’s appeal as it relates to the three violations from the November 2018 notice and order.

Jurisdiction

A notice and order becomes final and unreviewable if it is not timely appealed. KCC 20.20.080.H (“If a person fails to timely deliver the appeal statement..., the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department or division becomes final and unreviewable.”) Once the appeal window for the violations related to the (4)(3) construction of an addition to/structural repair of a residence, (2)(4) clearing and

grading, and (3)(5) construction of a retaining wall closed in 2018, those violations and those remedies became final and unchallengeable.

There are often three adversarial stages in a code enforcement dispute: the notice and order stage, the penalty stage, and the abatement stage. The examiner has jurisdiction over those first two; a recipient can appeal both a notice and order and any later civil penalties to us. So, as we do below when addressing one new violation, in a notice and order appeal we typically set certain steps that, so long as timely completed by the appellant, prohibit the Department from assessing any penalties.

Thus, on first impression, it appeared Mr. Baik could challenge remedies for those original violations from the February 2020 order that are different from the remedies contained in the November 2018 order. However, we are at a different stage than we thought.

Here civil penalties for the original three items have *already* been assessed and paid, and the February notice and order does not raise the possibility any new potential civil penalties for the original three violations. At this point, if the parties cannot work out a resolution on the original violations, the next step for those would be abatement. And abatement-related disputes do not run through the examiner but through superior court, bypassing us entirely. At the end of this order, we offer some *informal* thoughts on next steps for the original three violations, but we have no jurisdiction over those.

Vacant Building and Debris

As noted above, the February notice and order alleged two new violations, (1) a vacant building open to entry and an attractive nuisance, and (2) an accumulation of rubbish, salvage, and debris. Mr. Baik did not challenge those violations; his appeal noted that he would secure the home with plywood and would pick up debris. Ex. 2 at 002. *See* KCC 20.24.080.G. (“The scope of an appeal shall be limited to matters or issues raised in the appeal statement and any amendments to the appeal statement the examiner may authorize.”).

Mr. Baik observed at our hearing that 30 days seemed an appropriate window to complete cleanup of the (2) debris, but that with the stay-at-home order in place, it would be legally risky for him to undertake that work. That makes sense. We will peg compliance to 30 days, starting that window from when the Governor lifts enough of the stay-at-home order that cleaning up the site becomes legally feasible.

The (1) a vacant building open to entry is trickier. Normally, enforcement of a notice and order—including required remedies and deadlines—is stayed while an appeal to the examiner plays out. KCC 23.36.020.B. That is what Mr. Baik thought would happen here, and it is true for the (2) debris. However, enforcement is not stayed where the Department “determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.” *Id.* It is a tool the Department rarely employs; we recall only one or two examples in our hundreds of notice and order appeals. Here the Department found the open-to-entry building enough of a threat that the notice and order stated, directly after violation (1):

THIS VIOLATION POSES A SIGNIFICANT THREAT OF IMMEDIATE AND/OR IRREPARABLE HARM. ENFORCEMENT OF THIS NOTICE AND ORDER SHALL NOT BE STAYED DURING THE PROCESS OF ANY ADMINISTRATIVE APPEAL UNDER TITLE 23 OF THE KING COUNTY CODE

Ex. 5 at 005 (bold in original). The notice required Mr. Baik to secure the structure to unauthorized entry, via plywood and screws, by February 28, 2020. Ex. 5 at 006.

Mr. Baik apparently did not read the quoted text; he thought he could put off securing the building until *after* his appeal played out. That was an unfortunate oversight. The Department’s representative, Jeri Breazeal, testified that after the February 28 deadline passed without action, it hired a contractor, at a cost Ms. Breazeal thought was approximately \$1,800, to seal off the building in early March.

Mr. Baik will need to ensure that the building remains closed to entry, but at least as of yesterday’s hearing, the building was in compliance with (1). The Department has outstanding abatement costs, and abatement issues do not run through the examiner. As to issues within the examiner’s (future) purview, when the Department re-examines the property—at least 30 days after the Governor sufficiently lifts the stay-at-home order to allow cleanup—it will need to decide whether to issue any new civil penalties. If the Department issues civil penalties for the brief period between the February 28 deadline for Mr. Baik to board up the building and the time in early March the building was secured to entry, there is a waiver process and an eventual appeal of such civil penalties to the examiner Mr. Baik can exercise. KCC 23.32.050–120.

Informal Thoughts on Construction, Clearing and Grading, and Retaining Wall

While we do not have jurisdiction over the original three violations, to the extent it may be helpful, we offer some informal thoughts. Nothing we say in this heading is a finding or conclusion, and it may freely be ignored.

Although Mr. Baik already paid substantial civil penalties, paying penalties does not create relief from the “obligation to cure, abate or stop a violation.” KCC 23.24.070.D. And there is no optimal solution for how to bring the property into compliance.

The biggest hurdle is that Public Health approval is a prerequisite for a building permit. Mr. Baik explained that Public Health determined that his work triggered the need for a new septic system. He described hiring a septic designer who was unable to find a configuration for a legal drain field on the property. That is not entirely surprising, given shoreline and critical area restrictions. And Mr. Baik has been unable to purchase a septic easement from a neighbor. Public Health denied his application. He did not appeal that denial to the sewage review committee, not the examiner, is the administrative tribunal who hears such disputes.

It is not clear how he can remedy the situation. For an addition such as the porch Mr. Baik added (discussed below), the owner usually has the option of removing the new construction and reverting to the pre-existing condition. However, here Mr. Baik already started remodeling the pre-existing home, including adding a foundation, presumably adding significant value and extending the building’s useful life. It is not clear what, if anything, he could do to un-ring that

bell and bring the property back to a condition where Public Health would not require a new septic system. He may wish to explore with Public Health whether he could scale things back to avoid needing a new septic system, or take another run at a different septic design, or try again to obtain an easement. Without a septic solution, it is hard to see how the situation will be anything but a continual bleed.

In addition, apparently Mr. Baik built the porch and retaining wall within a public right-of-way. (We reviewed no relevant evidence and make no findings on that.) Mr. Baik states that the pertinent stretch of the right-of-way is an empty cul-de-sac. *If* the stretch of right-of-way is useless to the county road system and the public will be benefitted by its abandonment, vacating the public right-of-way and bringing it into private ownership is a possibility. Vacation might not be feasible, and that would not address the Public Health hurdle for submitting a building permit, nor the critical areas issues that impact the new construction, grading, and retaining wall. But vacation might be worth exploring.¹

By undertaking work without checking first on legal feasibility Mr. Baik painted himself into what has become a very painful corner. If we saw a magic solution, we would suggest that, but none come to mind. It appears at this point Mr. Baik is choosing between several unpleasant options.

Conclusion

We have no jurisdiction over Mr. Baik's appeal as it relates to the three violations from the November 2018 notice and order.

As to the accumulation of rubbish, whenever the Governor lifts enough of the stay-at-home order that cleaning up the site becomes legally feasible, Mr. Baik will have **30 days** to complete the cleanup. Once completed, he should email the Department to arrange for a site visit to check compliance. The Department may not assess any new penalties, so long as Mr. Baik completes the cleanup.

As to the vacant building open to entry, the Department boarded it up and it is currently in compliance. Mr. Baik should ensure it remains so. We have no jurisdiction over abatement costs. If civil penalties are assessed, he may seek a waiver of such penalties.

DATED April 22, 2020.



David Spohr
Hearing Examiner

¹ <https://www.kingcounty.gov/depts/local-services/roads/road-vacations.aspx>

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 APRIL 21, 2020, MOTION TO DISMISS HEARING IN THE APPEAL OF SEUNG BAIK, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR200071

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal and Seung Baik. 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 Motion to Dismiss to the Hearing Examiner |
| Exhibit no. 2 | Appeal, received February 24, 2020 |
| Exhibit no. 3 | Final Settlement Statement, dated February 18, 2020 |
| Exhibit no. 4 | Letter from Department of Local Services, dated February 14, 2020 |
| Exhibit no. 5 | Notice of Violation, issued February 14, 2020 |
| Exhibit no. 6 | Stop Work Order |
| Exhibit no. 7 | Notice of Violation for ENFR180501, issued November 16, 2018 |
| Exhibit no. 8 | Quit Claim Deed, dated August 20, 2019 |

DS/JO

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR200071**

SEUNG BAIK

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 April 22, 2020.



Jessica Oscoy
Legislative Secretary

Baik, Seung
Hardcopy

Breazeal, Jeri
Department of Local Services

Deraitus, Elizabeth
Department of Local Services

Lux, Sheryl
Department of Local Services

Williams, Toya
Department of Local Services