

October 20, 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

ORDER OF DISMISSAL

SUBJECT: Department of Local Services file no. **ENFR200166**

JOHN BABBITT
Code Enforcement Appeal

Location: [REDACTED] Woodinville

Appellant: **John Babbitt**
[REDACTED]
Woodinville, WA 98072
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
Telephone: (206) 477-5567
Email: ladonna.whalen@kingcounty.gov

Overview

Mr. Babbitt elected not to participate in yesterday's hearing. His failure to appear constitutes abandonment of his appeal, and we dismiss his appeal. However, for reasons explained below, we kick out the compliance deadline to **April 19, 2021**, and we offer some commentary in the hopes of avoiding future code enforcement penalties.

Failure to Appear

Mr. Babbitt's absence yesterday was not unexpected. Mr. Babbitt has been angry about what he termed false accusations from his neighbors and harassment. Ex. D3. He was upset enough at our September 1 prehearing conference that he hung up, the first time a party has ever done that in our thousand-plus proceedings. Our most thorough analysis of the issue animating Mr. Babbitt was our October 2 description that:

On June 30, Mr. Babbitt made a public records request to the County's executive branch. On August 18, the Department wrote to Mr. Babbitt that it had fulfilled the request for documents the executive branch had, provided a link to those documents, and advised Mr. Babbitt that as to a complaint submitted to the legislative branch, Mr. Babbitt would need to email the Council clerk.

On September 17, Mr. Babbitt declined an electronic invitation to an October 19 hearing, he "had not received the discovery of public information to defend the false claims made by King County. Until all discovery is furnished, I will not agree to a hearing. Please advise."

In our September 22 order [*setting the October 19 hearing*], we explained at length the role—and typically lack of role—that complainants or complaints play in our analysis of whether the Department has met its burden of showing a code violation, observed that Mr. Babbitt had not explained how anything about the complainant would be relevant to our inquiry, and concluded that he had not provided a relevant reason for us to delay a hearing.

Yesterday [*i.e., October 1*], Mr. Babbitt emailed that he would:

not attend this meeting [*the October 19 hearing*] because of King County's continued failure to supply me with the documents requested to support any claims against me or my property located at 16219 Avondale RD NE Woodinville WA 98072. I have made five requests for discovery to include ANY and ALL documents and or complaints about the Address 16219 Avondale RD NE Woodinville WA 98072. Until all documents are furnished to me with ample time to prepare for a defense, I cannot agree to a hearing date. Please advise as to when King County intends to act.

At first that sounded odd, because the Department emailed Mr. Babbitt on August 19 that it had completed his public records request for the executive branch. And the Clerk let Mr. Babbitt know on September 18 that it had finalized Mr. Babbitt's public records request as it related to councilmembers. Moreover, our deadline for the Department to submit to Mr. Babbitt (and the examiner) its

staff report and exhibits is always two weeks before the hearing, in this case this coming **Monday, October 5.**

So, Mr. Babbitt should review this weekend what he received from his PRA requests, and then review on Monday the staff report and exhibits, and let us promptly know what information he believes is missing.

If that information involves past complaints or complainant identities as it relates to his PRA request, we note that whether the complainant's identity is discoverable may turn on whether, "If at the time a complaint is filed the complainant... indicates a desire for disclosure or nondisclosure," in which case "such desire shall govern." RCW 42.56.240.

And as to any "missing" information, we explained at length in our September 22 order,

3. Rescheduling.

The code requires the examiner to process appeals expeditiously, including holding a hearing and issuing a written determination within ninety days of receiving an appeal. KCC 20.22.100.B.2. Mr. Babbitt has asked to reschedule until he gets "discovery of public information to defend the false claims made by King County. Until all discovery is furnished, I will not agree to a hearing." However, he has not shown how the information he requests would lead to relevant information on the issues we have jurisdiction over.

In a tiny percentage of code enforcement cases, the Department wants to use statements or documents a complainant submits as evidence of a violation. Where the Department intends to rely on complaint-generated evidence to prove a violation, the complainant's identity, motives, and credibility are relevant. However, such scenarios are few and far between.

Conversely, in almost all other scenarios, the Department gets a complaint, investigates, and based solely on the Department's own inquiry—visual observations gleaned from a legal vantage point, publicly available aerial mapping, etc.—the Department concludes there is or is not a violation. The Department has asserted that today's case is in this scenario. (We can hold the Department to that, excluding any evidence or inferences gleaned from the complainant.)

In this far more common context, whether the complainant was Mother Teresa or Beelzebub, was on point or wildly off the mark, was motivated by high ideals or petty motives, or anything else about the complainant, is not relevant to our proceeding. Our determination rises and falls on the evidence the Department and the appellant present at hearing, not on anything about or from the complainant. In doing so we give no deference to the Department. Our task is to decide for ourselves, after reviewing all the testimony and documentary evidence the parties produce at hearing, whether we conclude the Department has met its burden of proof.

In light of this, Mr. Babbitt has not explained how anything about the complainant would be relevant to our inquiry at hearing. We understand why he would be curious to know, and we understand he has made a public information request to the Clerk for that information. [Which, we understand, the Clerk closed out on September 18.] But he has not provided a relevant reason for us to delay a hearing.

Mr. Babbitt will [need to] articulate how the missing piece(s) would impact the issue we are set to decide at our hearing. Simply saying he needs it, without a thorough explanation of why, will not cut the mustard.

On October 5, the Department submitted its exhibits to us and to Mr. Babbitt. It included materials from four previous enforcement actions. Ex. D6. We do not know what other information might have been part of the materials produced to Mr. Babbitt from his public records requests, because Mr. Babbitt submitted no exhibits to us.

Most importantly, we received no further communication from Mr. Babbitt after October 1, let alone something explaining what the missing information was and how that missing information was pertinent to issues we were set to hear (on their merits) yesterday. Mr. Babbitt made his choice, and choices have consequences.

Compliance

Normally, when we dismiss an enforcement appeal—which has the effect of upholding the Department’s notice and order—we simply reset the compliance deadline contained in the original notice and order to something further down the road, and close the matter without further comment. That works well when the compliance deadline is something that needs no further explanation, like “submit a prescreening meeting request to the Department by *[date]*.”

Here, in contrast, the Department’s June 26, 2020, notice and order that Mr. Babbitt must “comply with the requirements for a home occupation by August 26, 2020,” is not very descriptive. If we dismissed Mr. Babbitt’s appeal with only that language (plus a new deadline), it would greatly increase the chances that the deadline would come and go with the parties still at loggerheads over what compliance meant. The Department might at some point likely issue substantial code enforcement penalties (as listed in exhibit D7, pages 1-2), Mr. Babbitt would seek a penalty waiver (KC 23.32.050), and if the waiver was unsuccessful, Mr. Babbitt would appeal that waiver decision to us (KCC 23.32.100).

In such a future penalty appeal, Mr. Babbitt could not challenge the underlying violation or requirements, (KCC 23.32.120.A), but one of the issues he could raise would be demonstrating that those penalties were assessed after he achieved compliance (KCC 23.32.110). That would be a risky time (for Mr. Babbitt) to argue over what “compliance” meant, because if it turned out Mr. Babbitt’s interpretation was incorrect, there could be significant financial ramifications to him and his property. Right now, there are no penalties on the line; an ounce of prevention at this stage may be worth a pound of cure later.

To try to avoid a future dispute, we will point to the pertinent home occupation requirements.

For lots under five acres, KCC 21A.30.085.L.1.a limits home occupation-related vehicles to two. The photo progression shows that Mr. Babbitt has made substantial progress winnowing down the large amount of heavy equipment he stored onsite in 2019. *Compare* exhibit D7 at 001-02 *with* later photos in exhibits D7–D9. However, the most recent photos, from last month, appear to show five commercial vehicles—a flatbed, a dump truck, a commercial coach, a bulldozer, and an excavator. Ex. D10.

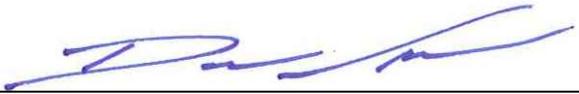
In addition, KCC 21A.30.085.D requires that outdoor storage be at least twenty-five feet from any property line and screened along the portions of such areas that can be seen from an adjacent parcel or roadway by Type II-equivalent landscape buffering. (KCC 21A.16.040.B describes Type II landscaping.) That may be challenging to meet here.

It is up to Mr. Babbitt to figure out next steps, but given the progress he has made since 2019, the medical condition he touched on in our prehearing conference, and the effort it may take (especially during Covid) to find a new home for some or all of the remaining equipment, we will push out the compliance deadline six months, to **April 19, 2021**.

Conclusion

We DISMISS Mr. Babbitt’s appeal. The new deadline for bringing the property into compliance is **April 19, 2021**.

DATED October 20, 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 OCTOBER 19, 2020, HEARING IN THE APPEAL OF JOHN BABBITT, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR200166

David Spohr was the Hearing Examiner in this matter. Participating in the hearing was 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 26, 2020
Exhibit no. D3	Appeal, received July 9, 2020
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Business records from the Department of Revenue and Secretary of State
Exhibit no. D6	Notes from previous code enforcement cases
Exhibit no. D7	Aerial photographs of subject property, dated 2019 and 2020
Exhibit no. D8	Photographs of subject property, dated March 5, 2020
Exhibit no. D9	Photographs of subject property, dated May 11, 2020
Exhibit no. D10	Photographs of subject property, dated September 8, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR200166**

JOHN BABBITT
Code Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** 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 October 20, 2020.



Lauren Olson
Legislative Secretary

Babbitt, John
Hardcopy

Breazeal, Jeri
Department of Local Services

Lux, Sheryl
Department of Local Services

Whalen, LaDonna
Department of Local Services