

September 30, 2021

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **E0300747**

RONALD SHEAR AND RONDA STERLEY
Code Enforcement Appeal

Location: [REDACTED] Auburn

Appellants: Ron Shear and Ronda Sterley
represented by **Justin Park**
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King County: Department of Local Services
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RECOMMENDATIONS/DECISION:

Department Position:	Uphold Citation.
Property Owner Position:	Reverse Citation.
Examiner's Decision:	Reverse Citation in Part; Uphold in Part.

FINDINGS OF FACT

After hearing the witnesses' testimony and observing their demeanor, studying the admitted exhibits, and considering the parties' arguments and relevant law, the Examiner finds and concludes:

1. **Background.** King County Department of Local Services ("Department") brought an enforcement action against Ronald Shear and Ronda Sterley ("Shear/Sterley") for code violations involving: (1) clearing and grading; (2) impervious surface; and (3) commercial parking and equipment storage in an agricultural zone. Shear/Sterley appealed.
2. **Hearing.** A hearing was held August 13, 2021. The Department appeared through Ms. Whalen. Shear/Sterley appeared through Mr. Park. The Department called Ms. Whalen as a witness. Shear/Sterley called two witnesses, Mr. Shear and Mr. Carpinito. With party agreement, post-hearing briefing was allowed on the legal effect of earlier decisions related to a nearby site Shear/Shirley also owns (28225 West Valley Highway). Briefing closed September 20, 2021.
3. **Property.** The site is at 28418 West Valley Highway South, Auburn, WA 98001, parcel number 3622049007 ("Property"). The Department had also cited Michael and Daniel Carpinito. This occurred due to use expansion from the Property onto the neighboring property the Carpinitos own. The land has since transferred to Shear/Sterley and a boundary line adjustment is being sought, so the Examiner dismissed these two adjoining property owners. Shear/Sterley also own and operate Buckley Recycling Center ("BRC") located about 185 feet away as the crow flies on a separate parcel. The Property is zoned Agriculture-10.
4. **Past Enforcement on the Property.** The last significant enforcement activity on the Property was in 2007. That was put on hold due to application submittals. Those submittals terminated in 2015, and there was no further enforcement until 2021.¹
5. **Prior Use Classification.** The Property owner described site use until 2004 as an interim recycling facility which did not require a permit (KCC 21A.06.640). In 2004, the use definition changed and the business no longer met this definition.²
6. **Grading.** The code requires a permit to clear or grade 100 cubic yards of dirt or fill.³ Grading is "any excavation, filling, removing the duff layer or any combination thereof."⁴ Going back to 2002 hundreds of thousands of cubic yards of wood based mulch and related materials have been brought on site, processed, and removed, but with little now remaining. Aerial photographs from 2005 document brush and ground wood stockpiling. These materials were removed between 2005 and 2007.⁵ That removal action taken about 14 years ago did involve clearing and grading of over 100 cubic feet, but the

¹ Testimony, Ms. Whalen.

² Testimony, Mr. Shear.

³ KCC 16.82.051(C)(1).

⁴ KCC 21A.06.565.

⁵ Exhibits D-6 and S-1 through S-11; Testimony, Mr. Shear.

material is no longer present.⁶ Woodbased stockpiles are not currently on the Property.⁷ In the Property's northwest corner photos from December of 2020 shows gravel and asphalt grindings used for road surfacing.⁸

7. **Impervious Surface.** The impervious surface limit in the A-10 zone is 15%-35%, with the larger percentage applying to properties less than one acre.⁹ A conditional use permit is required to increase these limits.¹⁰ The Department position was that on the Property 6,468.6 square feet were allowed, but it estimated that 36,000 square feet is likely, not including the area subject to the boundary line adjustment.¹¹

The Department's view that excess impervious surface is present is based on site use for parking and maintenance since the 1990s which creates soils sufficiently compacted to constitute impervious surface.¹² The Department pointed to aerial photographs and identified some gravel presence, but did not base its views on a site visit or testing.¹³ The Department did not retain a drainage expert and could not state at what point vehicle traversal created soils sufficiently compacted to be considered impervious. The Department placed particular weight on a 2006 Site Plan, though it was never implemented. The Department's position was that vehicle traversal and parking over the years had provided sufficient time for impervious surface to form. To provide exact time frames, the Department stated an expert would be deferred to.

The Property owner stated he had not intentionally laid down gravel to create additional impervious surface or laid down hard surface to get vehicles onto the site¹⁴ The site readily drains. Surrounding properties experience flooding due to their elevation,¹⁵ but the Property is higher up, and no evidence of water accumulation was submitted.¹⁶ However, much of the Property is used for parking vehicles and large equipment. Parking area boundaries are undefined, but based on photographs submitted, a significant portion of the site is being used for parking and equipment storage.

8. **Parking and Equipment Storage.** The Department alleges parking and equipment storage is occurring as a commercial and industrial accessory use not permitted in the A-10 zone.¹⁷ Shear/Sterley's position is that the trucks and equipment are used to support agricultural production so they are allowed. The use being supported is BRC,¹⁸ located proximate to the Property at 28225 West Valley Highway.

⁶ Testimony, Mr. Shear and Ms. Whalen.

⁷ Testimony, Mr. Shear; Exhibit D-6, pp. 11 and 12; Exhibit S-11, p. 1.

⁸ Exhibit D-6, pp. 11 and 12; Testimony, Mr. Shear and Ms. Whalen.

⁹ KCC 21A.12.040. The parcel is 43,124 square feet. Following the boundary line adjustment, the Property may be 56,982 square feet. Exhibit D-8, p. 7. On remand, the applicable restriction will need to be confirmed.

¹⁰ KCC 21A.12.040(B)(13).

¹¹ Testimony, Ms. Whalen.

¹² Exhibit D-6; Testimony, Ms. Whalen.

¹³ Testimony, Ms. Whalen.

¹⁴ Testimony, Mr. Shear.

¹⁵ Exhibit D-15; Testimony Mr. Shear and Ms. Whalen.

¹⁶ Testimony, Mr. Shear.

¹⁷ KCC 21A.08.060.

¹⁸ Exhibits S14 through S21, which include several sworn declarations.

The Department position is that the BRC use is materials processing, pointing to a printout from the BRC website which it states does not mention animal bedding, but focuses on materials processing, hauling, and trucking.¹⁹ The BRC website page provided actually does list mulch, topsoil and hog fuel as available for purchase. The document explains that hog fuel is a ground wood product used for animal bedding and that BRC purchases "stumps, logs, and clean wood ... (no paint or metal)."²⁰ The document includes photographs of these materials. These facts were further detailed through testimony and other exhibits.

Mr. Carpinito is the operations manager and real estate manager for Carpinito Brothers. They are retail/wholesale suppliers of landscape materials and agricultural growers of fresh vegetables, with farms in the Kent Valley. They farm about 750 acres they own and also lease ground for farming. He is familiar with BRC as his company owns neighboring property and they buy compost from BRC. The compost is packaged into bags and sold in bulk to consumers for garden amendment.

Mr. Shear is the Operations Manager for BRC, which he has owned with Ms. Sterley since 1996. He is familiar with the area as he grew up in the Kent Valley and lived there since 1965. He lived about 400 feet away from the Property in 1965, and has lived at the Property since 1974. He testified that the Property was an interim recycling facility which the code authorized up through 2004.

At around that time, the Property owners started bringing in brush and stumps for grinding, creating cattle bedding and mulch material. The operation started stockpiling at another site (the Spencers) around 2003 as mulch must sit for a month to turn black. Grinding and screening was also moved to that site resulting in the piles growing smaller. This reduction is shown on a 2007 aerial map.²¹

Mr. Shear brought product samples of cattle bedding, mulch, and compost mulch to the hearing as illustrative exhibits.²² The cattle bedding was described as made from grinding wood materials (stumps and logs). Mulch is the same product, but has been aged a couple months. Compost mulch is also made from the same materials, but is older, and is used in gardens and to mix with soils. It loosens the soils and provides nutrients to plants.

Buyers include farmers, gardeners, nurseries, and dairy farms.²³ These products have been provided to area farms and for home gardening. For example, a farm down the street (Schuler property) had mud problems, so cattle bedding was provided, and buyers such as High Grass Farms also purchase the bedding.²⁴

¹⁹ Exhibit D-19; Testimony, Ms. Whalen.

²⁰ Exhibit D-19, pp. 2, 3, and 5, capitalization removed.

²¹ Exhibit S-5.

²² Illustrative Exhibits 1-3.

²³ Testimony, Mr. Shear; Exhibits S-14 through 21.

²⁴ Exhibit S-19; Testimony, Mr. Shear.

Processing is necessarily involved in creating these materials which have to be ground and for the mulches, aged. Mr. Shear explained the Property is now primarily used for storing equipment and parking related to producing these materials.

BRC also operates a drop box service. This involves materials collection, including for tree removal and landscaping. Materials are brought back to the BRC site, and ground to make hog fuel and mulch. If metal, trash or plastics are returned, this is dropped elsewhere and not processed on site. Aerial photos show drop boxes and also trailers, which are used for delivering product.²⁵ Mr. Shear testified that he owns no trucking companies and the site is not used to support that type of business. The vehicles on site belong to BRC and are used with that property.

CONCLUSIONS OF LAW

1. **Jurisdiction and Review Standard.** The Examiner has jurisdiction over this appeal of a code enforcement citation.²⁶ "The burden of proof is on the county to establish by a preponderance of the evidence that the violation was committed."²⁷
2. **Impervious Surface.** The code defines impervious surface to include unpaved "parking" areas:

A nonvertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle at natural infiltration rates including, but not limited to, roofs, swimming pools and areas that are paved, graveled or made of packed or oiled earthen materials such as roads, walkways or parking areas. "Impervious surface" does not include landscaping and surface water flow control and water quality treatment facilities.²⁸

If an area is earthen and "packed," and is a "parking area," the code considers it "impervious." Parking area is not further defined, but a parking space is "an area accessible to vehicles, improved, maintained and used for the sole purpose of parking a motor vehicle."²⁹ The definition does not require that the area be paved or graveled, only that it be "packed or oiled" so that natural infiltration is impeded. The code definition does not require infiltration rate calculations, so a drainage expert need not document same, at least for this use.

A significant portion of the site was demonstrated to be used for parking vehicles and heavy equipment. The evidence did not substantiate parking area boundaries and simply because vehicles cross a site does not make it impervious. Under the code, the area must

²⁵ Exhibit D6, p. 11; Exhibit S-19 (Declaration of Jason Warder), which describes the attached hauling operation photos; Testimony, Mr. Shear.

²⁶ Ch. 23.20 KCC; and Ch. 20.22 KCC.

²⁷ KCC 23.20.080(D).

²⁸ KCC 21A.06.625, emphasis added; *see also* KCC 9.04.020(W). Whether the impervious surface limit should be measured based on the Property alone or in conjunction with the BRC site will need to be confirmed during remand.

²⁹ KCC 21A.06.855.

be “solely” used for parking. The matter should be remanded to demarcate parking areas consistent with code parameters.³⁰

3. **Grading.** “Grading” means any excavating, filling or land-disturbing activity, or combination thereof.”³¹ If over 100 cubic yards are graded, a permit is required.³² Past violations are addressed through KCC 16.82.130 and may require corrective work. Over the years, it is not disputed that more than over 100 cubic yards of fill has been added and removed to the site as part of the site’s business operations. Most fill was removed about 14 years ago and the Department identified no necessary corrective work required because of those activities. As the material has been removed there is nothing further to require. Under KCC 16.82.130 the situation must be first remedied and needed corrective actions taken. As no corrective actions were identified, and the materials have been removed, there is nothing left to permit, particularly given the extensive passage of time.³³

The more recent pile in the site’s northwest corner used for road construction was present in December of 2020, though it has since been reduced in size. A grading permit is needed to complete removal. The permit type was not addressed at the hearing, but a temporary permit under KCC 16.82.050 is likely appropriate.³⁴

4. **Use.** The parties disputed the nature of the use and whether it was agricultural or commercial. The use described by Mr. Shear and Mr. Carpinito, and in the declarations, includes storage of equipment pertaining to agricultural products, which include “composting and other soil amendments”³⁵ as well as “[n]ormal maintenance, operation and repair of existing serviceable equipment, structures, facilities or improved areas, including, but not limited to, fencing, farm access roads and parking.”³⁶ These products are agricultural products, a definition which include “horticultural ... products.”³⁷ No evidence was presented disputing Shear/Sterley produce these products. (Past legal decisions are addressed below).

An “accessory use” for agricultural resource use includes “[s]torage of agricultural products or equipment used on site....”³⁸ Shear/Sterley took the view that “on site” could not mean literally on the same parcel because farm equipment is often stored on one parcel and used on another.

³⁰ For permitting purposes, this will entail assessing any applicable exemptions, which may include identifying the establishment date of impervious surface. *See e.g.*, KCC 16.82.051(C)(2). (“Grading that produces less than two thousand square feet of new impervious surface on a single site added after January 1, 2005, or that produces less than two thousand square feet of replaced impervious surface or less than two thousand square feet of new plus replaced impervious surface after October 30, 2008.”).

³⁰ A “grading and clearing permit” includes temporary permits. KCC 16.82.020(P).

³¹ KCC 16.82.020(O).

³² KCC 16.82.051(C)(1).

³³ KCC 16.82.051(C)(2).

³⁴ A “grading and clearing permit” includes temporary permits. KCC 16.82.020(P).

³⁵ KCC 21A.06.036(A).

³⁶ KCC 21A.06.036(E).

³⁷ KCC 21A.06.039.

³⁸ KCC 21A.06.025(B).

The code does regulate parking space location. “For all nonresidential uses permitted in rural area[s] ... parking spaces shall be located on the site they are required to serve...”³⁹ However, this chapter is not directed at farming equipment or machinery, but more standard vehicles, such as automobiles, and only requires “a portion of parking areas” to be “within one hundred fifty feet” of “the nearest building entrance ... [the parking is] required to serve.”⁴⁰

The farm equipment here is not required by code and is on a parcel 185 feet from the site served. More significantly, the definition of “agricultural support services” does allow support uses to be on a different parcel. Agricultural support services are “any agricultural activity that is directly related to agriculture and directly dependent upon agriculture for its existence but is undertaken on lands that are not predominately in agricultural use.”⁴¹ Under the code, an agricultural support service need not be on the same legal parcel. There may be questions of proximity depending on the context, but as the parcel here is immediately proximate, this concern is not present. It is reasonable to view the business site as encompassing the entirety of the operation.

The above analysis does not preclude the presence of impermissible commercial uses. Based on the photographs and testimony from Ms. Whalen, and from Mr. Stear, there has been some activity which goes beyond agricultural support. This would include the asphalt grinding pile and any drop box use which goes beyond the scope of agricultural support or accessory use.

The Department submitted several enforcement decisions relating to the BRC site.⁴² The decisions provide detail on BRC site use, which is not the site enforcement was sought on. The Examiner is limited to reviewing the evidence submitted as part of this enforcement action. The Examiner has no jurisdiction in this appeal to alter or enforce these earlier decisions. At the hearing, evidence was presented on uses at the Property, and evidence detailed how they were supporting an agricultural use 185 feet away. That is the only evidence the Examiner can weigh, with her determinations affecting only the Property.

DECISION

The Department’s decision is reversed in part and upheld in part, and remanded as follows:

1. Mr. Shear and Ms. Sterley are to address grading, impervious surface and commercial use consistent with this Decision.

³⁹ KCC 21A.18.110(A)(3).

⁴⁰ KCC 21A.18.110(A)(3).

⁴¹ KCC 21A.06.040(S),

⁴² Exhibit D-23 through D-26.

2. Submit a pre-screening meeting request to the Department within 30 days of this Decision, and a grading permit application within 30 days of the meeting to complete removal of the pile of gravel and asphalt grindings on the Property's northwest corner. Meet all deadlines required to complete the application process.
3. Submit a code compliant demarcation of parking areas constituting impervious surface to the Department by the date the permit application identified in paragraph two above must be submitted. Depending on the size of the non-exempt area demarcated, and the date of establishment, a grading permit may be required. If so, submit a pre-screening meeting request to the Department within 30 days of this submittal, and a grading permit application within 30 days of the meeting. Meet all deadlines required to complete the application process.
4. The Department may extend any of these deadlines. If mediation is agreed to, the parties may agree to a different compliance schedule.
5. No penalties shall be imposed if these deadlines are met.

ORDERED September 30, 2021.



Susan Drummond
King County Hearing Examiner *pro tem*

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 AUGUST 13, 2021, HEARING IN THE APPEAL OF RONALD SHEAR AND RONDA STERLEY, DEPARTMENT OF LOCAL SERVICES FILE NO. E0300747

Susan Drummond was the Hearing Examiner in this matter. Participating in the hearing were Andrew Carpinito, Justin Park, Ron Shear, 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 April 29, 2021
Exhibit no. D3	Carpinito Appeal, received May 19, 2021

Exhibit no. D4	Shear/Sterley Appeal, received May 19, 2021
Exhibit no. D5	Codes cited in the notice and order
Exhibit no. D6	Historical Aerial photographs of subject property, dated x
Exhibit no. D7	Critical Area overlay aerials
Exhibit no. D8	Permit L06CG216
Exhibit no. D9	Comment records from code enforcement case files
Exhibit no. D10	Pre-application A05PM084 documentation
Exhibit no. D11	Permit history Parcel 3622049007
Exhibit no. D12	Permit history Parcel 3622049010
Exhibit no. D13	Photographs of subject property, dated October 6, 2004
Exhibit no. D14	Photographs of subject property, dated March 18, 2005
Exhibit no. D15	Photographs of subject property, dated January 13, 2006
Exhibit no. D16	Photographs of subject property, dated December 22, 2016
Exhibit no. D17	Photographs of subject property, dated March 17, 2021
Exhibit no. D18	Business Records
Exhibit no. D19	BRC website
Exhibit no. D20	Assessor Records
Exhibit no. D21	Permitting Boundary Line Adjustment information from website
Exhibit no. D22	Department Rebuttal
Exhibit no. D23	Hearing Examiner decision, dated January 28, 2010
Exhibit no. D24	2013 State Supreme Court decision NO. 87514-6 (WestLaw)
Exhibit no. D25	Hearing Examiner decision, dated April 4, 2014
Exhibit no. D26	Federal Court decision, dated December 1, 2020

The following exhibits were offered and entered into the record by Shear/Sterley:

Exhibit no. S1	King County Aerial IMAP of site from 1998
Exhibit no. S2	King County Aerial IMAP of site from 2000
Exhibit no. S3	King County Aerial IMAP of site from 2002
Exhibit no. S4	King County Aerial IMAP of site from 2005
Exhibit no. S5	King County Aerial IMAP of site from 2007
Exhibit no. S6	King County Aerial IMAP of site from 2009
Exhibit no. S7	King County Aerial IMAP of site from 2012
Exhibit no. S8	King County Aerial IMAP of site from 2013
Exhibit no. S9	King County Aerial IMAP of site from 2015
Exhibit no. S10	King County Aerial IMAP of site from 2017
Exhibit no. S11	King County Aerial IMAP of site from 2019
Exhibit no. S12	June 20, 1996 Statutory Warranty Deed
Exhibit no. S13	CTS Survey dated May 25, 2006
Exhibit no. S14	Various Aardvark Bark Blowing Invoices
Exhibit no. S15	Various Hy Grass Farms Invoices
Exhibit no. S16	Various Carpinito Brothers Invoices
Exhibit no. S17	Various Kent Easy Hill Nursery Invoices
Exhibit no. S18	Various Shamrock Landscaping LLC Invoices
Exhibit no. S19	Declaration of Jason Gwerder
Exhibit no. S20	Declaration of Pat Hunsaker
Exhibit no. S21	Declaration of Darron Malmassari

September 30, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **E0300747**

RONALD SHEAR AND RONDA STERLEY
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 September 30, 2021.



Jessica Oscoy
Office Manager

Breazeal, Jeri

Department of Local Services

Carpinito Farms LLC

Carpinito, Andrew

Carpinito, Michael/Daniel

Carpinito Farms LLC

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Hendrix, Jill

Prosecuting Attorney's Office

Hepburn, Michael

Prosecuting Attorney's Office

Lux, Sheryl

Department of Local Services

Park, Justin

Romero Park PS

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Shear, Ciara

Whalen, LaDonna

Department of Local Services