

August 16, 2021

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

King County Courthouse
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Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

SUMMARY ORDER

SUBJECT: Department of Local Services file no. **ENFR190105**

NIKOLAY AND YELENA MOKAN

Code Enforcement Appeal

Location: [REDACTED] Auburn

Appellants: **Nikolay and Yelena Mokan**

[REDACTED]
Auburn, WA 98001

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by **LaDonna Whalen**
Department of Local Services
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Snoqualmie, WA 98065
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Local Services moves to dismiss Appellants' challenge as being beyond the scope of a penalty appeal. Local Services is correct, and we dismiss the bulk of the appeal, but we temporarily retain jurisdiction over a narrow sliver.

Local Services' May 24, 2019, notice and order found two violations— (1) clearing and grading in critical areas/buffer, and (2) clearing and grading and placement of fill in a public right-of-

way, also within critical areas/buffers. It required Appellants to cure those violations by submitting a prescreening meeting request by June 14, then submitting a complete clearing and grading permit application within 30 days of the meeting, then following through with the permit process. It set out what the penalties would be for noncompliance. And it advised Appellants that the notice and order would become final and unreviewable by June 17 (listed in bold), followed by language (in all caps) that a failure to timely appeal meant Local Services' notice and order would become a final determination of the listed violations and that Appellants were responsible for code compliance. Once the June 17 deadline passed without an appeal, Appellants lost their ability to challenge those violations or their duty to apply for permits to bring the property into compliance.

Appellants apparently undertook the first step, but then did not submit a clearing and grading application within 30 days after the October 17, 2019, meeting, nor have they have submitted a complete permit application in the almost two years since. Local Services eventually served penalties related to those two violations, using the amounts set forth in the original notice and order.

Appellants now challenge those penalties. However, their challenge is really that Local Services' May 2019 notice and order got it wrong in asserting a critical area violation, in finding a right-of-way violation, and in finding that the work exceeded the permit trigger. Those all would have been fair game as part of a June 2019 appeal, but they come far too late today. Beyond the normal principle that one cannot belatedly attack an appealable decision after the appeal window closes, the code is crystal clear that in an "appeal of the assessment of civil penalties, the appellant may not challenge findings, requirements or other items that could have been challenged during the appeal period for a ... notice and order." KCC 23.32.120.A.

Instead, a penalty appeal is limited to allowing an appellant an opportunity "to demonstrate by a preponderance of the evidence that civil penalties were [a] assessed after achieving compliance or that the penalties are [b] otherwise erroneous or [c] excessive under the circumstances." KCC 23.32.110.

Appellants' April 12, 2021, challenges do not assert that they had met the permitting requirements of the notice and order at the time Local Services issued its penalty assessment, and their assertions of the penalties' erroneous nature amounts to backdoor challenge to findings in the May 2019 notice and order. However, in past penalty appeals, we have found penalties excessive and reduced those penalties where an appellant later comes into compliance. Thus, we will retain jurisdiction to allow Appellants, after they follow through with and complete the permitting process, to request a penalty reduction.

Our summary disposition today is the County's final decision that Local Services' May 2019 notice and order—the violations cited there, and Appellants' duty to follow the steps outlined therein to apply for, and complete, corrective permits—became final and unreviewable at the point Appellants' appeal window closed in June 2019, and that Appellants' April 2021 appeal is beyond the scope of an allowed penalty appeal. If Appellants believe we are mis-reading the law or the facts, they need to timely and properly commence an action in superior court under the Land Use Petition Act, Chapter 36.70C RCW, challenging today's order. If not, this order too will become final and unreviewable.

Our order today covers all items appealable as of today. Our temporary retention of jurisdiction encompasses only the one topic we cannot rule on today, namely that if Appellants follow through with the clearing and grading permitting process and correct the violations, they could one day petition us to find that, in light of their compliance, the \$9,450 in penalties are excessive.

We will retain jurisdiction for 90 days, that is, until **November 16, 2021**. If Appellants email with proof of a complete clearing and grading permit submission by that date, we will continue holding onto to this case to tackle, the excessive-penalty issue after the property comes into compliance. If proof is not submitted by November 16, today's order will itself become final on November 17 as to the penalties not being excessive, with any appeal on the excessiveness issue being due to superior court in the weeks following November 17, as set forth in the Land Use Petition Act, Chapter 36.70C RCW.

In addition, we request that Local Services hold off on taking any abatement actions until after November 16.

If for some reason we have misunderstood the situation, by **September 9, 2021**, either party is free to file, with the examiner, a motion for reconsideration explaining why the examiner should not be dismissing this appeal. Filing a timely motion for reconsideration postpones the deadline (described below the signature line) for lodging an appeal.

DATED August 16, 2021.



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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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 August 16, 2021.



Jessica Oscoy
Office Manager

Lux, Sheryl

Department of Local Services

Mokan, Nikolay/Yelena

Hardcopy

Whalen, LaDonna

Department of Local Services