February 23, 2021

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR200374**

JEFF AND NICOLE JOSEPHSEN
Code Enforcement Appeal

Location: [redacted] Carnation

Appellants: **Jeff & Nicole Josephsen**
[redacted]
Ft Meade, MD 20755
Telephone: [redacted]
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King County: Department of Local Services
represented by **LaDonna Whalen**
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FINDINGS AND CONCLUSIONS:

Overview

1. Jeff Josephsen appeals a Department of Local Services (DLS) notice and order, asserting violations for a home remodel and clearing. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we partially grant and partially deny Mr. Josephsen's appeal, and offer some perspective for moving forward with the permitting process.

Background

2. In September 2019, Mr. Josephsen purchased the subject property. Mr. Josephsen described the inside as the worst smelling house he had ever encountered. Ex. A6 at 001. Much of the grounds were strewn with shanties, RVs, old cars, and debris. Ex. A6 at 001; Ex. at D5 at 009. He then began extensive work on the house and on the grounds, including removing Japanese knotweed (a very noxious weed). *See, e.g.*, Exs. A34, A35. He notes that he spent over $30,000 cleaning up the property.

3. Recognizing that he would need a permit for the work he had started, on April 10, 2020, Mr. Josephsen left a message on DLS's already-built construction (ABC) permit line—which is also the code enforcement complaint line—asking for permitting instructions. Ex. D3 at 011. DLS replied later that day, seeking clarification on his request. Ex. D3 at 012. On April 13, Mr. Josephsen responded, detailing the work he had undertaken and asking to be pointed in the right direction. Ex. D3 at 013. Nothing in the record shows that DLS followed up on his second request for help.

4. On May 7, Toya Williams entered notes in DLS's database indicating a cut and paste of an online May 2 public complaint regarding work on the property. Ex. D9 at 001. On May 11, DLS sent Mr. Josephsen a letter explaining DLS had received a complaint about the property. Ex. D9 at 001; A5 at 001. On May 20, code enforcement officer LaDonna Whalen and Mr. Josephsen spoke and set up a site visit. Ex. D9 at 001. Ms. Whalen came out on May 26. Ex. D9 at 002.

5. On May 29, Ms. Whalen emailed a permitting packet to Mr. Josephsen, and put him in touch with DLS's plans reviewer. Ex. D12 at 001-02. On June 1, she sent Mr. Josephsen a letter, giving Mr. Josephsen until August 3 to submit a prescreening meeting request to get the permit ball rolling, lest the Department resort to issuing a notice and order.

6. On August 27, Ms. Whalen emailed Mr. Josephsen that DLS had not received the preapplication packet by August 3, and that if Mr. Josephsen did not submit materials within two weeks [i.e. by October 10], DLS would be issuing a legal notice on the property's title. Ex. D12.

7. On October 6, Ms. Whalen entered notes from a follow-up public complaint. Ex. D9 at 002. On November 5, DLS issued a notice and order, asserting violations related to the house remodel and to work on the rest of the property, and asserting critical areas violations related to both. Ex. D2.

8. Mr. Josephsen timely appealed on November 30, asserting a variety of procedural and substantive challenges. Ex. D3. On December 17, we sent a hearing notice which sketched out the issues we gleaned from reading DLS's notice and order and Mr. Josephsen's appeal. We requested that DLS and Mr. Josephsen address certain matters in their prehearing submittals, including the origin of the code enforcement complaint.

9. We started our hearing on January 14, then paused to get input from DLS's system administrator on how complaints, comments, and dated entries are created and

potentially rule edited in DLS's electronic system. We received a written response from DLS's system administrator, exhibit D19, then resumed the hearing on February 17.

Legal Standard

10. 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. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement to an enforcement action, DLS bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.3.

Case Origin

11. Mr. Josephsen argues that DLS's employees forged and tampered with the electronic notes, faking entries appearing to show the May and October complaints, and perhaps pretending to be members of the public and filing "complaints" from their own phones that would show up as "publicuser" in the database. Ex. AR3 at 002; testimony. Mr. Josephsen put significant effort into analyzing how and why the data could have been tampered with. Ex. AR3 at 002-007.

12. While Toya Williams (the author of the May 5 entry indicating a May 2 complaint) retired from DLS last year, Ms. Whalen was available to, and did, testify. She explained that when she gets a complaint, she cuts and pastes that complaint into the electronic notes system. Once entered, she cannot change the entry. While DLS staff writes (and can later edit) complaint *descriptions*, neither she nor Ms. Williams had or have the ability to backdate comments or to edit comments after the day they are entered into the system.[1] While the May and October complaints came online public web users (*see* exhibit D11, showing "PUBLICUSER0" as the complaint source), she occasionally generates her own complaint, such as when a member of the public makes an oral complaint to her. When she does that, it shows up under her name, and not as a public user.

13. Stacey Wenkel, DLS's system administrator, testified that the complaints were not created in the office but instead were web-generated—hence the "PUBLICUSER0" notation. *See* Ex. D19. As to DLS's notes, the comment date is system-generated. System users like Ms. Williams or Ms. Whalen had and have no ability to backdate comments or later edit comments once entered.[2] While other local governments might configure their online program in different ways, Mx. Wenkel has configured DLS's system so that only Mx. Wenkel could make those types of changes; no one else at DLS has those system permissions to enable that. Prior to our request in January, Mx. Wenkel was not involved with Mr. Josephsen's case, and she has not added or edited any comments.

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[1] There is no question that the wording of the *description* of the violation—both in the electronic notes and in the letter—came from DLS staff. *See* Ex. D9 at 001, A5 at 001. The issue is whether DLS fabricated the actual May 2 and October 6 *complaints* themselves. The part of Mr. Josephsen's presentation that pointed to the specific wording of the violation description is not disputed—DLS decides how to write up and edit the description language. But that is not evidence that DLS forged or faked the complaints themselves.

[2] Apparently, with other agencies that use the same electronic product, the system is configurable so that office staff can update their own comments. Ex. AA2.

14. Having reviewed well over a thousand code enforcement cases as third-party neutral (either as an ombudsman or as an examiner), we can only recall two that were DLS-initiated, and both of those emanated from critical areas staff, not from code enforcement staff. Moreover, while as a matter of policy code enforcement does not seek out violations, there is no statutory bar to doing so. Thus, if code enforcement had decided it just did not have enough on its plate and wanted more work—itself a bizarre proposition given that individual officers sometimes carry 400 open complaints at a time—it had no need to commit forgery and risk criminal exposure. DLS already had Mr. Josephsen's email detailing work without a permit, proof positive of work triggering permit requirements.

15. Mr. Josephsen argues that because, in our December 2020, prehearing order we requested that DLS address the source of the complaint, DLS was incentivized to fabricate complaints from the public to buttress its evidence for its response or to cover up for failing to promptly provide him with permit information. Those have some surface appeal, but that evaporates on further inspection. In our two previous involvements where the complaint was DLS-generated, DLS felt no need to disguise the source of the complaint. DLS explained *why* it deemed it appropriate to initiate enforcement (absent a public complaint), but it did not hide *that* staff was the source of the complaint. And, unfortunately, during the pandemic there has been nothing unusual about permitting staff not promptly responding to requests or submittals—inaction DLS in past cases has explained, but not tried to cover up.

16. Occam's razor, the scientific rule that the simplest of competing theories is preferred to the more complex, is in full force here. Either one of two things happened:

    A. DLS dropped the permitting ball after April 13, received a public complaint on May 2, and started the enforcement process without connecting the dots.

    B. To cover up for dropping the permitting ball after April 13, at some point after we issued our December 17 order, various DLS officials launched an elaborate cover-up scheme. They fabricated and backdated two electronic notes, and perhaps two web entries, to make it *look* like someone from the public had complained in May and again in October. Ms. Williams, Ms. Whalen, and perhaps Mx. Wenkel committed felonies by forging official documents. And then Ms. Whalen and Mx. Wenkel committed perjury under oath. And they took all these personal risks in a low-profile, run-of-the mill, clearing and home remodel case, where there would have been nothing barring DLS from proceeding with enforcement based on Mr. Josephsen's April email and just acknowledging that it unilaterally sought enforcement, just as it acknowledged the origin in the previous DLS-initiated code enforcement cases we have encountered.

    We find the first significantly more likely.

17. Mr. Josephsen seems to honestly believe there was vast conspiracy. And he put in a lot of impressive work showing how something like that could have happened. His initial suspicion was well-founded—one would reasonably assume that, having called DLS on

April 10 to self-report and to seek permit assistance, code enforcement's contacts in May were in response to his call. But that is not what the evidence shows.

18. DLS should have provided prompter permit assistance after Mr. Josephsen sent his April 13 explanation and request to "point him in the right direction." Instead, the record shows DLS did not provide permit assistance until May 29, and then only because a public complaint spurred a response. And DLS's right hand should have known what its left was doing, so that when Ms. Whalen came out on May 26 to investigate the May 2 complaint, she would have been aware that Mr. Josephsen had earlier self-reported. That might have changed the tenor of the conversation and perhaps sent this case down a different track. Mr. Josephsen was not off-base in asserting that DLS's initial actions or inactions broke trust and tainted the relationship.

19. On the other hand, while Mr. Josephsen asserts DLS slandered him and other property owners, exhibit AA4 at 001, he committed plenty of his own slander. As noted above, he essentially asserts that Ms. Williams and Ms. Whalen (and maybe Mx. Wenkel) forged official documents and that Ms. Whalen and Mx. Wenkel committed perjury under oath. He took it further for Ms. Whalen, writing that "a criminal investigation may need to be pursued against Mrs. Whalen for withholding evidence from the Examiner and fabricating evidence presented to the Examiner while sitting in a position requiring the public trust." Ex. AR3 at 010.

20. If we had our mediator hat on, we would suggest that apologies in both directions would help make the permit process go smoother for everyone. But at the end of the day we sit in a quasi-judicial capacity, not in a mediator role.

Notice and Order Issuance

21. Mr. Josephsen asserts that we should dismiss the case because DLS should not have issued the notice and order. As a guideline, notice and orders determinations should be made within 120 days from receipt of a complaint. KCC 23.02.070.H. Here, the initial complaint came in May 2, and DLS waited until November 5 to issue the notice and order, 187 days after receiving the complaint. So, nothing about the timeline here seems rushed.

22. Moreover, ours is not a scenario where an owner did not dispute the violation and permit need, was working to assemble application materials, sought more time for submittal, yet DLS grew frustrated and served a notice and order anyway. Instead, at some point between his unanswered April 13 request and DLS's November notice and order, Mr. Josephsen felt that DLS broke his trust and tainted the relationship; he became "uncomfortable" moving forward with the permitting process. Ex. A6 at 001. In addition, Mr. Josephsen is challenging the existence of a clearing and grading violation and DLS's assertion that the trench line and deck were critical areas violations—challenges we partially vindicate below. Getting that dispute to a neutral third-party required DLS to issue an appealable order that Mr. Josephsen could bring to us. Waiting to issue a notice and order would have just kicked the can further down the road.

23. Moreover, how quick DLS should be to issue a violation is a double edge-sword. While the name escapes us, we have (or recently had) one case on our docket where DLS received a complaint, investigated, and discovered a violation. After the then-owner promised to work to bring the property into compliance, DLS paused with formal enforcement. Instead of fixing the problem, the owner sold the property. When DLS approached the new owner about bringing the property into compliance, the new owner was shocked, there having been no notice on title to alert him (when he was deciding whether to purchase the property) of a pre-existing violation he would need to cure. He refused to apply for permits, DLS issued a notice and order, and on appeal to us he sought dismissal of the violation, reasoning that DLS should have issued a violation to the previous owner. We rejected his dismissal request, but that case illustrates the lack of a perfect solution for how quickly DLS should issue a violation after it receives a complaint.

24. In fact, Mr. Josephsen made a similar claim here, asserting multiple times that DLS should have pursued enforcement against the previous owner (the Buses) and thus should be barred from pursuing compliance against him. Ex. D3 at 011, 014. Unlike the dispute from the previous paragraph, there is no record here that DLS had any notice of violations while the Buses owned the property. Ex. D11. Thus, it is unclear how DLS would have been in position to attempt to get the Buses to come into compliance while the Buses owned the property and could have corrected their violations. That issue is mooted here, because DLS is only pursuing violations for the work performed on Mr. Josephsen's watch and not during the Buses' ownership. But his argument again illustrates the competing pulls in deciding when to serve and record a notice and order.

25. In any event, we are where we are. DLS issued a notice and order to Mr. Josephsen. Mr. Josephsen timely appealed that. And we now turn to the merits.

<u>Clearing and Grading</u>

26. The clearing and grading code states that all clearing and grading requires a permit unless specifically excepted. KCC 16.82.050.B. The definition of "grading" is broad, meaning "any excavating, filling or land-disturbing activity, or combination thereof," with "land disturbing activity" itself defined as activity resulting "in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography." KCC 16.82.020.O & Q. The definition of clearing is even broader, including "the cutting, killing, grubbing or removing of vegetation or other organic material by physical, mechanical, chemical or any other similar means." KCC 16.82.020.D.

27. The subject property is overlain with a variety of critical areas—potential steep slope hazards, erosional hazards, potential landslide hazards, and aquatic areas and their respective buffers. Ex. D-5 at 004-07. Within critical areas or their buffers, clearing or grading is excepted from permit requirements only if undertaken in compliance with KCC chapters 16.82 and 21A.24. *See* KCC 16.82.051.B. DLS asserted four activities were clearing/grading violations.

Junk Cleanup

28. DLS's initial position was that much of the initial cleanup work Mr. Josephsen and his crew performed in the critical area buffer, such as using equipment to remove shanties and other junk, was a violation. We pushed back on that, pointing to exhibits, especially D5 at 009, showing a huge swath of bare area covered with the previous owner's trash, shanties, vehicles, and cargo containers that Mr. Josephsen later carted away. Ex. D5 at 009; Ex. A19-A24. DLS deemed these "junk and debris." Ex. D5 at 008. DLS amended its position, withdrawing the assertion that Mr. Josephsen's cleanup work in that area—even using equipment to move all the junk out—was itself a violation.

Waterline

29. Mr. Josephsen trenched a waterline from his house to the public road. Much of that work was within a mapped critical area buffer. Ex. D7. DLS asserts that this work was a critical areas violation. Ex. D5 at 002. However, Mr. Josephsen dug the line under a pre-existing driveway. Exs. D20 & A37-A39. His trench line was not an incursion into a critical areas buffer. While the waterline itself needs approvals, its trenching and placement was not a grading violation.

Knotweed Removal

30. Mr. Josephsen undertook an ambitious project to remove knotweed, both within the aquatic area/buffer near the stream and the steep slope/buffer near the road. Absent a forest management, farm management, or rural stewardship plan, removal of noxious weeds in a critical area buffer is allowed only if:

> (1) removal is undertaken with hand labor, including hand-held mechanical tools, unless the King County noxious weed control board otherwise prescribes the use of riding mowers, light mechanical cultivating equipment or herbicides or biological control methods;
>
> (2) the area is stabilized to avoid regrowth or regeneration of noxious weeds;
>
> (3) the cleared area is revegetated with native vegetation and stabilized against erosion; and
>
> (4) herbicide use is in accordance with federal and state law;

KCC 21A.24.045.D.23.b.

31. Exception (1) is not an issue because the removal itself was undertaken with hand labor (machetes), and there was no discussion of (4) any herbicide use. *See also* Exs. A31 & A32. The problem is that Mr. Josephsen has not shown compliance with (2) or (3). As he noted at hearing, he has not had time to stabilize or revegetate the areas, and removal will be a longer-term project. That is understandable, but as we sit here today and rule on

the record before us, Mr. Josephsen has not shown that his clearing in the red areas on the map meets all four requirements to be exempt.

32. There is no question Mr. Josephsen has worked tirelessly to improve the property. The land is in a much more environmentally-beneficial state now than when he purchased the property. However, doing good work is not an exemption from the need to obtain a permit, just as, for example, Mr. Josephsen's good work upgrading a deteriorated home into something much better does exempt the remodel from needing a building permit.

33. Mr. Josephsen offered some thoughtful policy considerations for broadening the exceptions to encourage more people to remove invasive vegetation from critical areas/buffers without having to obtain a permit. Ex. A35 at 003. DLS might want to review these the next time it amends the critical areas code. However, the current criteria on clearing in a critical area buffer is specific and unambiguous. "When presented with such clear language, we must assume the Legislature meant exactly what it said and apply the statute as written." *University of Washington v. City of Seattle*, 188 Wn. 2d 823, 832, 399 P.3d 519 (2017) (citations omitted). Similarly, even if we preferred a different result, we do not get to "add words where the legislature has chosen not to include them." *Nelson v. Department of Labor & Industries*, 198 Wn. App. 101, 110, 392 P.3d 1138 (2017). Regardless of our preferences, our role is to interpret the codes "as they are written, and not as we would like them to be written." *Brown v. State*, 155 Wn.2d 254, 268 (2005) (citations omitted).

Trail Construction

34. To facilitate removal of trash and knotweed from the aquatic area, Mr. Josephsen used a skid loader (bobcat) to blade an access route to the stream area. Mr. Josephsen constructed an approximately 6-foot wide, 3-foot deep, and 20-foot long trail. Exs. D3 at 014, D5 at 002, A32, A36. Mr. Josephsen argues that blading the trail was an "inherent" part of the weed removal, and thus should be classified not as a trail but as part of the knotweed removal. That is a moot point here, because, as noted above, clearing the knotweed in critical area buffers without meeting all the criteria KCC 21A.24.045.D.23.b was itself a permit-triggering act. However, even if the cleared buffer area had (as of the date of hearing) met all four criteria, and thus the clearing itself was not a violation, we would not find the trail argument persuasive. Digging what was essentially an access route to get equipment to the area to facilitate removal is best characterized as grading, not as knotweed removal itself.[3]

35. Our finding does *not* turn on the use of machinery to dig out the path. Ex. A32. If, instead of the bobcat, the crew had dug out that portion of the stream buffer entirely using hand shovels, it still would have triggered the permit requirement. That they used a bulldozer to blade it may have made this more pronounced, but it was not the tipping point that triggered a permit.

[3] Clearing and grading merge in several respects—removing vegetative cover is both clearing and grading. KCC 16.82.020.D, .O & .Q.

Moving Forward with the Clearing and Grading

36. Having rejected the assertions that the waterline trenching and the shanty and other debris removal were critical areas violations, while upholding the violation for the knotweed removal in the areas demarked as red and the access trail, the fix seems relatively straightforward. Because the trail and removal areas were within what DLS mapped as critical area buffers, unless Mr. Josephsen disputes those designations or their buffer widths, there is no need to delineate the property.[4] Mr. Josephsen can submit a plan to stabilize the areas he cleared (or will clear), avoid noxious weed regrowth or regeneration, revegetate those areas with native vegetation, and stabilize against erosion, thus meeting KCC 21A.24.045.D.23.b. Moreover, Ms. Whalen noted that Mr. Josephsen could include a clearing and grading component as part of his building permit application, and would not need to apply for a separate clearing and grading permit.

37. The cut trail is different. Mr. Josephsen states he wants to keep the trail. Applying for permit to permanently keep the trail "as is" would be a more arduous permit process than proposing to remediate the carved-out area. A proposal that included eventually decommissioning the trail, restoring it to its initial contours, and revegetating the trail area would seem a simpler and less costly process than trying to legalize the work. If he wants to keep the trail permanently, he is certainly free to pursue permit approval, but that is a different type of proposition than incorporating the trail into his restoration proposal, using it to facilitate weed removal, suppression, stabilization, and revegetation, and then restoring the trail area.

<u>Home Remodel</u>

38. There is no dispute that Mr. Josephsen's work on the house triggered the need for a building permit. The scope work exempt from the need for a building permit are relatively minimal, limited to items like "[p]ainting, papering, tiling, carpeting, cabinets, counter tops and similar finish work." KCC 16.02.240.7. And Mr. Josephsen himself recognized that he needed a permit, which is what prompted his April 2020 call to DLS to begin the permit process. There are, however, two construction-related items in dispute—the deck and the number of bedrooms and bathrooms and perhaps kitchens.

Deck Work

39. There is no question that Mr. Josephsen reconfigured the deck so that part of it extends further out from the house than the pre-existing deck. *Compare* Ex. D8 at 008 *with* Ex. A7 at 002. Because that area lies within a mapped critical area buffer, DLS asserts this was a buffer incursion thus a critical areas violation.

40. However, a pre-existing concrete slab underlies the entire new deck. Ex. D7 at 005. We do not know whether the previous owner poured the concrete slab prior to the sensitive areas or critical areas ordinances. However, that is irrelevant here, because (as noted

[4] As discussed at hearing, a critical areas study could be required depending on what Public Health requires related to the septic system, a topic we discussed below. But that would be a separate issue from requiring a critical areas study for digging the trail and weed removal.

above) DLS is not asserting that Mr. Josephsen is responsible for violations the previous owners committed. Thus, we are not treating the pad itself as a critical area violation.

41. Although Mr. Josephsen reconfigured the deck, he stayed well within the footprint of the concrete pad; he did not extend the deck further into the critical area buffer. And while "new impervious surface" includes "the addition of a more compacted surface" to already impervious surfaces, KCC 9.04.020.KK, one cannot get much more impervious than a concrete slab. Thus, while the deck itself requires the normal building permit reviews, it was not a critical areas violation and does not trigger critical area review.

Bedrooms and Bathrooms and Kitchen

42. Assessor records from 1971 show two toilets. Ex. D16 at 002. An August 1975 Assessor report shows three bedrooms, 1¾ baths, and one kitchen. Ex. D17 at 002 & 003. The 2019 real estate adds show three bedrooms and two bathrooms, with a partially finished basement. Ex. D13 at 001, 003. The pictures of the basement appear to show an unfinished area. Ex. A16-A17.

43. Mr. Josephsen submitted a letter from previous occupants asserting that someone used the downstairs as a bedroom, and that there was a shower, toilet, sink and cooking area down there. Ex. AA4 at 002. However, there is no record that any previous owner applied for any permits to add bedrooms or bathrooms or an additional kitchen. Any such bedrooms, bathrooms, or kitchens were not legally constructed.

44. A use must have been lawfully established in order to later obtain legal nonconforming use status. KCC 21A.32.040. Mere passage of time with an illegal use in place is not a sufficient substitute. The owner bears the initial burden to show that the use was lawfully created. *King County, Dept. of Dev. & Envtl. Services v. King County*, 177 Wn.2d 636, 643, 305 P.3d 240, 244 (2013). Mr. Josephsen has not shown that any bedrooms or bathrooms or a kitchen beyond those listed in the Assessor's records was legally added. They are not part of his baseline.

45. That is not to say that Mr. Josephsen cannot, from a building-permit perspective, legalize additional bedrooms, bathrooms, or a kitchen. As Mr. Josephsen and DLS recognize, the real issue is what is legalize-able, given the property's current on-site septic system (OSS), and what if any OSS upgrades will be required. Mr. Josephsen's concern is legitimate; OSS work can be expensive. However, Public Health, not DLS, makes those OSS calls. If a dispute arises with Public Health's determinations, the Sewage Review Committee (SRC), not the examiner, is the appellate tribunal with jurisdiction to review Public Health OSS decisions. *See* BHC 13.12.040. It is not something DLS controls, or we indirectly control in reviewing DLS determinations.

46. The number of legal bedrooms and bathrooms may be a moot point. Even for a re-model that does not add bedrooms or bathrooms, our understanding of Public Health's process is that because the remodel extends the functional life of the house, Public Health still needs to confirm that the existing septic system is up to the task for the extended-life home. But those are issues for Mr. Josephsen and Public Health (and

potentially the Sewage Review Commission) to wade through; the examiner has no jurisdiction.

Moving Forward with the Home Remodel

47. Even after Mr. Josephsen applies to DLS, initial reviews and setting up and holding the preapplication meeting will take time. Thus, if time is of the essence, it may be more efficient for Mr. Josephsen to move on a parallel track, submitting his prescreening meeting request proposal to DLS while simultaneously requesting OSS-related approval from Public Health. He might find out, for example, that Public Health would check off on the existing OSS for the original three bedrooms and 1¾ bathrooms, but that any additions would require expensive OSS work. Conversely, he might find that Public Health will require more OSS work anyway, and so adding extra bedrooms or bathrooms might pencil out. Mr. Josephsen can certainly wait until after the preapplication conference to apply to Public Health; we are just providing food for thought. Ex. D3 at 032-046.

DECISION

1. We grant Mr. Josephsen's appeal in relation to the cleaned-up shanty area, the waterline, and the deck.

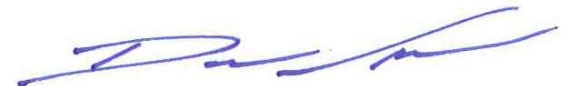
2. We deny Mr. Josephsen's appeal in relation to the knotweed removal, trail construction, and argument that something beyond three bedrooms, 1¾ baths, and one kitchen were previously legalized. Ex. A30 at 001; Ex. D17 at 003.

3. We sustain the steps for bringing the property into compliance contained in DLS's November 5, 2020, notice and order (exhibit D2 at 002) *except* that the deadline for Mr. Josephsen to submit a complete prescreening meeting request packet to DLS is **March 26, 2021**.

4. Mr. Josephsen may eventually submit a single building permit application covering both the construction and the clearing/grading. Unless Mr. Josephsen disputes the critical areas and buffer widths DLS presented at hearing, or unless Public Health requires OSS expansion, there is no need for Mr. Josephsen to delineate the property. Mr. Josephsen can submit a plan related to past and future weed removal, stabilization, weed regrowth avoidance, and revegetation, as well as the ultimate disposition of the trail.

5. No penalties may be assessed against Mr. Josephsen or the subject property if Mr. Josephsen meets the compliance steps set forth in the notice and order. If not, DLS may assess penalties.

ORDERED February 23, 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.

MINUTES OF THE JANUARY 14, 2021 AND FEBRUARY 17, 2021, HEARING IN THE APPEAL OF JEFF AND NICOLE JOSEPHSEN, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR200374

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Jeff Josephsen, and Stacey Wenkel. A verbatim recording of the hearing is available in the Hearing Examiner's Office. The following exhibits were admitted:

Exhibit no. D1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. D2	Notice and order, issued November 5, 2020
Exhibit no. D3	Appeal, received November 29, 2020
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Aerial photographs of subject property, dated 2019
Exhibit no. D6	Photographs of subject property, dated May 4, 2020
Exhibit no. D7	Photographs of subject property, dated on May 26, 2020
Exhibit no. D8	Current Assessor records for parcel
Exhibit no. D9	Compilation of comments for case ENFR20-0374
Exhibit no. D10	Certified mail tracking and Certified green card
Exhibit no. D11	Permit records for parcel
Exhibit no. D12	E-mail exchanges
Exhibit no. D13	Real estate ad and photos at time of Josephsen purchase
Exhibit no. D14	Sensitive area notice for neighboring Josephsen parcel #8016100095
Exhibit no. D15	E-mail from Health Department, no septic approval request received
Exhibit no. D16	Assessor records pre 1973
Exhibit no. D17	Assessor records post 1972
Exhibit no. D18	Violation letter, dated June 1, 2020
Exhibit no. D19	Response to Order Seeking DLS Response, dated January 27, 2021
Exhibit no. D20	2007 Driveway map

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

Exhibit no. A1	Screenshot of King County Permits website, dated January 3, 2021
Exhibit no. A2	Screenshot of King County Code Enforcement website, dated January 3, 2021
Exhibit no. A3	Email from Code Enforcement, date April 10, 2020
Exhibit no. A4	Screenshot of King County Department of Permitting and Environmental Review databased, dated January 4, 2021
Exhibit no. A5	Letter from Department of Local Services, dated May 2021
Exhibit no. A6	Email from Teresa Opolka, dated January 4, 2021

Exhibit no. A7	Photo of outside the house
Exhibit no. A8	Photo of outside the house
Exhibit no. A9	Photo of inside the house
Exhibit no. A10	Photo of fireplace
Exhibit no. A11	Photo of bathroom
Exhibit no. A12	Photo of bathroom
Exhibit no. A13	Photo of bedroom
Exhibit no. A14	Photo of inside the house
Exhibit no. A15	Photo of inside the house
Exhibit no. A16	Photo of inside the house
Exhibit no. A17	Photo of inside the house
Exhibit no. A18	Photo of outside the house
Exhibit no. A19	Photo of Truck
Exhibit no. A20	Photo of outside the house
Exhibit no. A21	Photo of outside the house
Exhibit no. A22	Photo of outside the house
Exhibit no. A23	Photo of outside the house
Exhibit no. A24	Photo of outside the house
Exhibit no. A25	Photo of outside the house
Exhibit no. A26	Photo of outside the house
Exhibit no. A27	Photo of outside the house
Exhibit no. A28	Letter from the previous owner, dated June 6, 2020
Exhibit no. A29	Photo showing clean-up of trash
Exhibit no. A30	Map of Locations of Japanese Knotweed on Property
Exhibit no. A31	Statement from Gary Josephsen, dated December 18, 2020
Exhibit no. A32	Statement from Andrew Devey, dated December 18, 2020
Exhibit no. A33	Statement from Jacob Jones, dated January 1, 2021
Exhibit no. A34	Photo showing the Japanese Knotweed on the property
Exhibit no. A35	Photo showing the Japanese Knotweed on the property
Exhibit no. A36	Photo showing minimal trail that was created
Exhibit no. A37	Map showing placement of the waterline
Exhibit no. A38	Photo showing trenching and installation of the waterline
Exhibit no. A39	Photo showing trenching and installation of the waterline
Exhibit no. A40	Photo showing trenching and installation of the waterline
Exhibit no. A41	Photo showing trenching and installation of the waterline
Exhibit no. A42	Building plan image regarding deck
Exhibit no. A43	Building plan image regarding deck
Exhibit no. A44	Photo of deck
Exhibit no. A45	Letter from previous owner, dated June 6, 2020
Exhibit no. AR1	Copy of Exhibit D1 with note
Exhibit no. AR2	Copy of Compilation of all comment by Record with note
Exhibit no. AR3	Letter from Department of Local Services, dated May 11, 2020
Exhibit no. AA1	Screenshot of Accela website
Exhibit no. AA2	Screenshot of Accela testimonials
Exhibit no. AA3	Email from Rob Ronnenberg, dated February 1, 2021
Exhibit no. AA4	Letter from previous owner, dated January 16, 2021
Exhibit no. AA5	Public Health Operation/Performance Monitoring Report

February 23, 2021

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR200374**

JEFF AND NICOLE JOSEPHSEN
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 February 23, 2021.

Lauren Olson
Legislative Secretary

Breazeal, Jeri
Department of Local Services

Josephsen, Jeff & Nicole
Hardcopy

Lux, Sheryl
Department of Local Services

Wenkel, Stacey
Department of Local Services

Whalen, LaDonna
Department of Local Services