

September 21, 2022

**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

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR150316 (Waiver)**

JOHN AND CANDACE TAPERT
Code Enforcement Appeal

Location: [REDACTED] Duvall

Appellants: **John and Candace Tapert**

[REDACTED]
Duvall, WA 98019

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by **Holly Sawin**
Department of Local Services
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FINDINGS AND CONCLUSIONS:

Overview

1. John and Candace Tapert appeal a Department of Local Services denial of their penalty waiver request. The Taperts elected to proceed by written communication only, so we did not hold a traditional hearing, proceeded instead solely on the written record. After studying the submittals and considering the parties' arguments and the relevant law, we find that the Taperts have not met their burden of proof. We deny their appeal.

Background

2. Local Services issued the Taperts an October 2019 notice and order asserting (1) construction of a single-family residence without the required permits, and (2) a clearing and grading violations, and requiring them to obtain permits to bring the violations into compliance. The Taperts' November 2019 appeal did not assert any alleged errors in the notice and order or any reasons why we should reverse or modify. Instead, the appeal simply stated, in its entirety, that:

We are looking to get a little more time to get through the Health Department. We are in the process of [d]esigns being redone as they expired and were not finalized. The process is in the works and moving forward.
3. We held a December 2019 conference, at which the Taperts' consultant described progress towards compliance and remaining steps. We discussed the extensions the Taperts requested. A few days later we issued a summary order, sustaining the notice and order except for an extended deadline. Our order provided information on, and a deadline for, filing a motion for reconsideration if for some reason we had misunderstood the situation, or for filing an appeal to superior court. We closed by noting that, "This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court." The Taperts did not seek reconsideration from us or relief from superior court.
4. The Taperts did not complete the permit process and Local Services eventually assessed penalties. Local Services later denied the Taperts' penalty waiver request. The Taperts timely appealed.
5. We set a June 24 prehearing conference. We received no indication that the date or time were unworkable, yet only Local Services appeared. Rather than dismiss the Taperts' appeal for failing to participate, we set a July 27 hearing.
6. The morning of the hearing, Ms. Tapert noted that Mr. Tapert was hard of hearing and requested that they correspond via written communication. After trying unsuccessfully to reach the Taperts by phone, we explained in writing that the back-and-forth of a hearing—where witnesses can testify and ask questions—would be advantageous, and we offered some options for the Taperts like a TTY (which translates voice to text) phone hearing or a live hearing with a sign language interpreter, but we ultimately left the choice to the Taperts. They elected a written-only process.
7. The parties submitted additional material, and we closed our record two weeks ago.

Legal Standard

8. In a penalty appeal, the burden is "on the appellant 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. In addition, 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.

9. 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. For those matters or issues raised in an appeal statement to an enforcement action, the Department bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.2.

Analysis

Clearing and Grading Penalties

10. The clearing and grading penalties are straightforward. The Taperts claim in their May 2022 appeal and July 2022 letter that the clearing and grading citation was issued in error because there was no violation—that they were allowed a lawn, they did not exceed the clearing limits that trigger a permit requirement, and any evidence to the contrary would have been obtained by trespass. Those are all valid issues they could have raised in their November 2019 appeal of Local Services’ October 2019 notice and order, or even raised in our December 2019 conference.
11. However, they elected not to, only requesting more time for compliance. The existence of the clearing and grading violation and need for a permit to address that thus became water under the bridge by January 2020. It was an unfortunate miscalculation for the Taperts to later try to challenge the existence of the clearing and grading violation and need for a permit, instead of obtaining a permit to bring what had already been determined to be clearing and grading violation into compliance. The Taperts have not met their burden of proof under KCC 23.32.120.A for the clearing and grading-related penalties.

Construction Penalties

12. The construction of a single-family residence without the required permits violation is a little different, in that the Taperts are not challenging the existence of the violation or the need for permits. Their assertion that Local Services inappropriately required them to install a sprinkler is not something they could have appealed in 2019. Thus, we noted in our prehearing order that the Taperts were not necessarily barred from challenging here whether Local Services erroneously required sprinklers (and thus whether the penalties associated with the construction violation were erroneously issued). We invited the parties to submit any related documents. Only Local Services submitted exhibits.
13. The “Residential Fire Sprinkler Systems” bulletin Local Services provides lists when sprinklers are required and also the alternative to sprinklers where the applicant has (or can build) a compliant fire access driveway/easement/public road/private road. In none of their paperwork did the Taperts assert that they had met either requirement. Their appeal statement was limited to an assertion that, having been trained architectural designers and artists with a lifetime developing artistic sensibilities, it would have been an

offense to their “aesthetic sense” to install exposed orange piping throughout the house, piping that cannot be hidden.

14. When the Taperts decided to construct an entire house without first obtaining permits, they stuck themselves behind the eight ball, because they could not easily change their design to hide the piping. The Taperts did not claim that Local Services required them to expose orange piping throughout the house, but merely that they would have to deconstruct their house (we assume meaning walls and ceilings) to bury the pipes. And the standard we apply is not an “aesthetic sense” but what the rules require.
15. The only relevant defense the Taperts offer is Ms. Tapert’s written statement that they were unaware that the fire access road was a possible alternative. Local Services responded that a fire marshal representative was at their 2015 prescreening meeting and would have discussed road improvements for sprinkler systems, as that is standard practice.
16. We expected Local Services to include in its response a copy of the notes from that meeting and the letter that we assume went out to the Taperts after that meeting. It would certainly have been helpful. And if this were a notice and order appeal, where Local Services had the burden of proof, that failure might have been ruinous. But here the Taperts bear the burden of proof, and we weigh Ms. Tapert’s recollection of a meeting that occurred seven years ago against Local Services’ statement that it would have been standard practice to raise that. In each of the myriad of past cases where sprinklers have come up in the residential context, Local Services has uniformly stated some variation of, “you can either install sprinklers or a fire access road.” The Taperts have not met their burden of proof under KCC 23.32.120.A.

Next Steps

17. Ms. Tapert asked whether paying the penalty would resolve the situation. Unfortunately, that is not the case. “Payment of the civil penalties assessed under the notice and order does not relieve a person found to be responsible for code compliance of that person’s duty to correct the violation.” KCC 23.24.020.E. There is still a residence and a clearing/grading violation that will have to be brought into compliance. A representative from Local Services will be contacting Taperts in the near future about next steps.
18. The Taperts point to their limited income and the impact fines would have on them. We do not discount that. When someone from Local Services contacts the Taperts about next steps, the Taperts should discuss an extended payment plan and/or whether, if they later bring the property into full compliance, they can seek a penalty reduction. Local Services should *not* send the penalties to collections until after trying to reach an understanding. It seems the priority should be the Taperts continuing on with the permit process to bring the home and clearing/grading into compliance, and completing that will require financial resources.

DECISION:

We DENY the Taperts’ appeal.

ORDERED September 21, 2022.



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.

**HEARING IN THE APPEAL OF JOHN AND CANDACE TAPERT,
DEPARTMENT OF LOCAL SERVICES
FILE NO. ENFR150316 (WAIVER)**

David Spohr was the Hearing Examiner in this matter. 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	Civil Penalty Waiver Denial Letter, dated May 10, 2022
Exhibit no. D3	Civil Penalty Waiver Denial Appeal, dated May 22, 2022
Exhibit no. D4	Fire Permit FIRP21-0199 and related information
Exhibit no. D5	Email chain, dated September 1 to September 6, 2022

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

Exhibit no. A1	Letter, dated September 18, 2022
Exhibit no. A2	Email chain, dated July 27, 2022
Exhibit no. A3	Email chain, dated July 27 to July 28, 2022
Exhibit no. A4	Email chain, dated July 29 to September 1, 2022

DS/lo

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CERTIFICATE OF SERVICE

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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 September 21, 2022.



Lauren Olson
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Dunlap, Steve

Hardcopy

Lux, Sheryl

Department of Local Services

Sawin, Holly

Department of Local Services

Tapert, John/Candace

Hardcopy