

August 4, 2022

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR200651 Waiver**

PETER AND LISA SCHMIDT
Code Enforcement Appeal

Location: 46100 220th Avenue SE

Appellants: **Lisa and Peter Schmidt**

[REDACTED]
Enumclaw, WA 98022

Telephone: [REDACTED]

Email: [REDACTED]
[REDACTED]

King County: Department of Local Services
represented by **Jeri Breazeal**
Department of Local Services
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
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FINDINGS AND CONCLUSIONS:

1. The Department of Local Services (Local Service) issued Lisa and Peter Schmidt penalties for violations of a stop work order on two days in February 2022. After Local Services denied Ms. Schmidt's waiver request, the Schmidts appealed to us, and we held a hearing. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal for February 5 and grant it for February 8.

Background

2. On January 20, 2022, Local Services issued a stop work order (Order) for “Construction/grading work outside of the approved hours of operation of 7am to 7pm weekdays, 9am to 7pm weekends.” Ex. D2. Because the Order was not appealed, it became a “final determination that the civil code violation occurred and that work was properly ordered to cease.” KCC 23.28.020.D. The issue today is whether that Order was later violated.
3. On February 14, Local Services issued penalties asserting that the Order was violated on February 5 and again on February 8. Ex. D3. The basic penalty for violating a stop work is \$500, with enhancements for other items not in play here. KCC 23.32.010.A.1.c. The two alleged violations total \$1000.
4. The Schmidts filed a penalty waiver request on March 21. KCC 23.32.050.A. On May 12, Local Services denied the request. Ex. D5. Ms. Schmidt appealed. Ex. D6.
5. Local Services moved to dismiss the appeal because Ms. Schmidt did not provide reasons why the penalties were erroneous or excessive under the circumstances. We denied Local Services’ motion on July 5, giving the Schmidts until July 13 to amend their complaint. The Schmidts timely complied. Ex. D6. We went to hearing on August 2.

Legal Standard

6. 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. Rather 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.
7. We give no deference to an agency. HER XV.F.3.

Evidence and Analysis as to Saturday, February 5

8. Mary Ann DeMoss provided testimony and video from Saturday morning (when the allowed work start time was 9 am).
9. The first video shows a white-cabbed truck dumping a load sideways. Ex. D10. The time stamp on her phone shows this was shot at 8:32 am. Ex. D13 at 001.
10. The next video shows what appears to be that white truck heading out, while a second truck, one with a two-toned cab and two trailers, moves towards the dump area. Ex. D11. The time stamp on her phone shows this was shot at 8:34 am. Ex. D13 at 002.
11. The third video is a little obscured by intervening equipment, but more likely than not it shows the back bed of that second truck dumping its load. Ex. D12. The time stamp Local Services submitted in exhibit D13 does not correspond with D12, it being a head-

on view of a vehicle on the property at 8:06 am; the perspective and the action does not match any frame from any of the three videos Ms. DeMoss testified about. Saving for a minute whether the timestamps on the first two photos were doctored (as Mr. Schmidt claimed), given the action in the first two videos, along with Mr. Schmidts' statement that a truck dumping a load would only be on the site about a minute, we conclude that the third video shows dumping a few minutes after the second video.

12. The Schmidts counter with a time stamp of their own, what appears to be the white side-loader at the quarry at 7:57 am on February 5. Ex. A13. They also presented a Google Map print out estimating a 37 minute drive between the quarry and their home. Ex. A77. Mr. Schmidt testified that a truck would need extra time to exit the quarry and would likely drive slower and thus could not have been on the property to dump around 8:32. He opined that timestamps can be manipulated, and that was not hard to do, insinuating that Ms. DeMoss had done so.
13. And that last point is the crux of the matter. Timestamps, either at the quarry or on a phone might be off by a few minutes in either direction; these are not exactly atomic clocks. But the only way Ms. DeMoss would have video showing trucks dumping their loads almost a full half-hour before the time such activities were allowed to start was if she doctored the stamps and then perjured herself at hearing. Given Ms. DeMoss's self-professed lack of technical competence, which was on display at the hearing, that would seem odd. More importantly, she testified under oath that she did not touch the timestamps, and we found Ms. DeMoss credible. We thus find that construction/grading work occurred on Saturday, February 5 well before 9 am start time. We uphold the \$500 penalty associated with that first violation.

Evidence and Analysis for Tuesday, February 8

14. We did not find Sue Wallace nearly as credible as Ms. DeMoss.
15. Part of it was the tidal wave of complaints Ms. Wallace emailed and texted County staff, complaining about, in addition to hours of operation and noise: where on the property the Schmidts were working, brush and logs, truck length, imported pipe and logs, standing water, berms, concrete, amount of fill, the driveway, septic, streams, ditches, wetland delineations, fences, water, and wells. Exs. A24-A75. Some of those complaints, especially the early ones involving the Schmidts' departures from the originally-approved plans, were on point, as we upheld in an earlier decision.¹ But the sheer number of complaints gives us pause; in any event, they are the opposite of targeted complaints focused on hours of operation, and potentially showed an ax to grind.
16. And part of that was the nature of the testimony and documentation about the morning of February 8 (when the start time was 7 am). Ms. Wallace submitted a picture from *inside* her house, using her telephoto lens. Ex. D8 at 005. The picture shows nothing but headlights; trucks and or personnel arriving on or leaving a job site before the allowed work start time is not itself a violation. Only if the actual work, like dumping fill or

¹ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2022/2022%20Jun%20Jul/DWEL210267_ENFR220144_Schmidt.ashx?la=en.

moving dirt, started before or continued after the allowed hours would there be a violation.

17. Ms. Wallace stated that after the first photo (which she testified was taken at 6:48) she went outside and observed an excavator going. Yet, even possessing a camera with a telephoto lens, she did not take any outdoor photos to show that, photos which would not have had the glare of her window. In her email, she stated that, “Peter or his people at 645 this morning with the exhaust brakes reaching down the road. He dumped a load was gone before 702,” exhibit D8 at 004, meaning that, unlike Saturday where work started almost a half-hour before the start time and a few minutes either way were irrelevant, here precise minutes matter.
18. In the end, there was just something not quite adding up about Ms. Wallace’s presentation. We find no stop work order violation for February 8.


Forward-looking

19. We have no easy solution for what seems to be incredibly dysfunctional situation, both between the Schmidts and their neighbors and between the Schmidts and their neighbors and the County. The Schmidts take umbrage at the excessiveness of especially Ms. Wallace’s complaints to the County. Yet our last hearing Mr. Schmidt agreed that he had left over 200 voicemails for just one County employee, which is unbelievably excessive. The amount of taxpayer resources the County has had to devote here are astounding. And everyone appears incredibly frustrated with everyone else. Mediation may offer a much more efficient and effective solution than the current approaches. More informally, Ms. Schmidt offered several times to talk to any of her neighbors and take any complaints directly.
20. It would behoove the Schmidts to double back with anyone who plans to work on the site to ensure they know that, while they can come and go before or after the allowed hours, they cannot do any work on the site, which includes dumping during those times. Maybe give it a couple minutes of padding at the start or end of the day, just to save everyone the time and hassle of another dispute.
21. Finally, by separate email we will write Local Services (cc’ing the Schmidts) in the next week or so to address the ongoing dispute about permit fees.

DECISION:

1. We uphold the violation and \$500 penalty related to February 5.
2. We overturn the violation and penalty related to February 8.

ORDERED August 4, 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.

MINUTES OF THE AUGUST 2, 2022, HEARING IN THE APPEAL OF PETER AND LISA SCHMIDT, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR200651 WAIVER

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, Mary Ann DeMoss, Sue Wallace, Lisa Schmidt, and Peter Schmidt. 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	Copy of Stop Work issued January 20, 2022
Exhibit no. D3	Copy of bill, dated February 14, 2022
Exhibit no. D4	Copy of waiver request
Exhibit no. D5	Copy of waiver denial
Exhibit no. D6	Copy of Appeal received May 31, 2022, and revised on July 13, 2022
Exhibit no. D7	Copies of Applicable Codes
Exhibit no. D8	Photographs and Videos
Exhibit no. D9	Email from CFO; Warren Cheney related to permit fees
Exhibit no. D10	Video IMG_2670.MOV
Exhibit no. D11	Video Exhibit D11 871542ED-64BD-4AC7-B42EE88FF058062C.MOV
Exhibit no. D12	Video Exhibit D12 8906D072-7C5A-4DFF-B90FB262BD109BD4.MOV
Exhibit no. D13	Screenshot of video times

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

Exhibit no. A1	Peter/Lisa Appeal Statement sent to Hearing Examiner July 12, 2022
Exhibit no. A2	Denial Letter La Donna Whalen May 12, 2022
Exhibit no. A3-A4	Peter/Lisa Appeal Statement Detailed
Exhibit no. A5	Email from Sherly lux to Lisa Schmidt (reviewing explanation of fine), dated March 29, 2022
Exhibit no. A6	Code Enforcement Statement, dated July 7, 2022
Exhibit no. A7-A8	Email from Sheryl Lux to Lisa Schmidt (reviewing explanation of name and fine) Email chain Mark Rowe to Sherly Lux (looking into name and

- billing) May 31, 2022. Email from Sheryl Lux to Lisa Schmidt (Status of fine-waiver) April 18, 2022
- Exhibit no. A9 Email Lisa Schmidt to Sheryl Lux (confusion on denial letter and dates), dated June 1, 2022
- Exhibit no. A10 Email Lisa Schmidt to Sheryl Lux (Listing fee waivers), dated April 18, 2022
- Exhibit no. A11 Email Sheryl Lux to Lisa Schmidt (Civil Penalties Letter and explanation), dated June 1, 2022
- Exhibit no. A12 Dump Ticket, dated February 3, 2022
- Exhibit no. A13 Dump Ticket, dated February 5, 2022
- Exhibit no. A14 Email Kim Simpson to Lisa Schmidt (File a Claim) missed meeting June 9, 2022
- Exhibit no. A15-A17 Email (chain) Lisa Schmidt to John Taylor (Phone number not working) Email to Mark Rowe about number not working. Email Lisa Schmidt to Mark Rowe about damage waiver
- Exhibit no. A18 Email Mark Rowe to Elizabeth Hill, Mr. Spohr and Mr. Chan (Fees and waivers)
- Exhibit no. A19 Fees for Schmidt Property, dated September 27, March 11, April 6, April 22
- Exhibit no. A20 Summary of charges 04/22/2022
- Exhibit no. A21 Payments Applied statement
- Exhibit no. A22 Summary of charges, dated April 22, 2022
- Exhibit no. A23 Email King County to Lisa Schmidt (records request) February 22, 2022
- Exhibit no. A24 Email from Sue Wallace to Mark Rowe and Doug Dobkins. (Claims Peter and John are driving by her house, with an interesting substance.) January 22, 2022
- Exhibit no. A25 Email from Sue Wallace to Mark Rowe and Doug Dobkins (Subject Peter Schmidt) January 16, 2022. Videos
- Exhibit no. A26 Email Sue Wallace to Mark Rowe and Doug Dobkins (Info Mary Ann could see) January 16, 2022
- Exhibit no. A27 Email Sue Wallace to Mark Rowe (Peter Smiths trucks) February 5, 2022
- Exhibit no. A28 Email Sue Wallace to Mark Rowe and Doug Dobkins (Complaint) January 20, 2022
- Exhibit no. A29-A49 Text messages from Sue Wallace and Doug Dobkins
- Exhibit no. A50-A75 Text messages from Sue Wallace and Ted Sullivan Farmland Preservation Department
- Exhibit no. A77 Dump Ticket, dated February 8, 2022
- Exhibit no. A78 Driving Time from Quarry in Orting
- Exhibit no. A78-A80 Overview of Feb 5 and Feb 8 fines and rebuttal statement

DS/lo

August 4, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR200651 Waiver**

PETER AND LISA SCHMIDT
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 August 4, 2022.



Lauren Olson
Legislative Secretary

Breazeal, Jeri

Department of Local Services

DeMoss, Mary Ann

Lux, Sheryl

Department of Local Services

Schmidt, Lisa and Peter

Hardcopy

Vinson, Brett

Wallace, Sue

Whalen, LaDonna

Department of Local Services