

July 14, 2022

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

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**ORDER ON MOTION**

SUBJECT: Department of Local Services file no. **ENFR210957**

**RONDA STERLEY AND RONALD SHEAR AND R&R STABLES**  
Code Enforcement Appeal

Location: [REDACTED] Enumclaw

Appellants: Ronald Shear and Ronda Sterley  
R&R Stables & Equestrian Event Center, LLC  
*represented by* **Justin Park**  
Romero Parks P.S.  
155-108th Avenue NE Suite 202  
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King County: Department of Local Services  
*represented by* **Michael Hepburn**  
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The Hearing Examiner issued a Report and Decision reversing a King County Department of Local Services (“Department”) citation for code violations involving unpermitted clearing and grading by Sterley/Shear (Ronda Sterley, Ronald Shear, and R&R Stables & Equestrian Event Center, LLC). The Department, through the King County Office of the Prosecuting Attorney, requested reconsideration, which Sterley/Shear opposed.

Reconsideration may be granted if the moving party “shows that the examiner’s determination was based in whole or part on erroneous information or failed to comply with existing laws....”<sup>1</sup> The Department’s motion is based on these grounds.

The Department argued that “new, previously unavailable evidence relevant to the fact issues should be considered,”<sup>2</sup> but provided no evidence with its motion. If credible evidence had been provided to support a contention that a decision was based on “erroneous information,” the record could be re-opened to allow the admission of the new evidence and to allow the other party a rebuttal opportunity. However, assertions made in a pleading without evidentiary support (*i.e.*, affidavits and/or exhibits) are insufficient to “show” the Decision was based on “erroneous information.” Otherwise, any disappointed party could argue there is new evidence and re-open the hearing to retry a case.

This would not be consistent with either the rules governing reconsideration or with the general principles of fairness which the Hearing Examiner Rules (HER) embody by closing the record following the hearing.<sup>3</sup> These principles are especially important where it is not even clear that the “new evidence” would change the outcome. The motion language is equivocal, stating the result “probably” or “may” change. (Shear/Sterley “were probably no longer exempted” from clearing and critical areas requirements,<sup>4</sup> and the “cleared forestation ... may well have the legal effect of negating the” agricultural use exceptions.<sup>5</sup>).

As for legal error, the Department asserts “[j]ust because an area of a parcel zoned for Agriculture was, at some point in the past, used for agricultural/horticultural activities, that does not automatically exempt the clearing of trees or noxious weeds from the application of the Clearing code permit requirement under Horticultural Activities exception.”<sup>6</sup> The Decision did not intend to make such a holding. But in reconsidering the Decision and evidence, it is apparent that a portion of the land which was cleared and graded involved heavily treed areas where agricultural activity had terminated. Consequently, this was the de facto conclusion, and it must be corrected.

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<sup>1</sup> HER XVI(A)(3).

<sup>2</sup> Motion for Reconsideration, p. 4:1-2, emphasis in text.

<sup>3</sup> “Evidence or argument submitted after a hearing is not considered or included in the hearing record....” HER XIII(E).

<sup>4</sup> Motion for Reconsideration, p. 2:10-12.

<sup>5</sup> Motion for Reconsideration, p. 2:12-14.

<sup>6</sup> Motion for Reconsideration, p. 2:20-23, referencing KCC 21A.24.045(D)(53) and (54), emphasis in text.

Exhibit D6, p. 18, is a photo taken on September 24, 2021, before the Department’s site visit. It shows an area that was heavily treed, but on which a large portion of an area measuring roughly 239,809 square feet had been cleared.<sup>7</sup> The photograph at D6, p. 2, illustrates where this forested area had been in 2019. Sterley/Shear was responsible for much of this clearing.<sup>8</sup>

Department witnesses could largely not “speak to” the agricultural exceptions,<sup>9</sup> but based on these photographs and testimony describing the photographs, there was legal error in determining the agricultural exception is broad enough to shield all of this clearing and grading from permitting. A portion of the clearing and grading was subject to the exception, and the original Decision contains analysis on that.

To summarize, the Decision determined KCC 16.82.051 has a grading/clearing exception for horticulture activity, livestock manure storage, and agricultural drainage maintenance, and that Shear/Sterley had conducted these activities on the site. Except as to the de facto determination that permitting was not required for grading/clearing on the site’s forested or heavily treed portions where agricultural use had terminated, the analysis in the Decision remains unrevised.

As for the relationship between KCC 21A.24.045 on critical areas and KCC 16.82.051 on the agricultural exception, the Department did not address critical areas at the hearing, taking the position that if a permit was determined to be required, this would be dealt with during its review. Consequently, the Decision contains no findings as to the presence or absence of critical areas. Nor does the Decision contain legal analysis on the relationship between the referenced critical areas and agricultural exceptions code sections. These issues were not presented to the Examiner, so on this question there is nothing which can be reconsidered.

## ORDER

The motion for reconsideration is denied in part and granted in part. The Citation is upheld as it relates to clearing the forested area depicted in exhibit D6, p. 2. By **August 15, 2022**, Shear/Sterley shall submit a complete pre-application meeting request addressing this area.

DATED July 14, 2022.



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Susan Drummond  
King County Hearing Examiner *pro tem*

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<sup>7</sup> Testimony, Inspector Stephens.

<sup>8</sup> Testimony, Inspector Stephens.

<sup>9</sup> Testimony, Inspector Stephens.

### **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.

SD/lo

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**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services file no. **ENFR210957**

**RONDA STERLEY AND RONALD SHEAR AND R&R STABLES**  
Code Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER ON MOTION** 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 July 14, 2022.



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Lauren Olson  
Legislative Secretary

**Beach, Eric**

Department of Natural Resources and Parks

**Breazeal, Jeri**

Department of Local Services

**Heldreth, Laura**

R&R Stables & Equestrian Event Center, LLC  
Hardcopy

**Hendrix, Jill**

Prosecuting Attorney's Office

**Hepburn, Michael**

Prosecuting Attorney's Office

**Lux, Sheryl**

Department of Local Services

**McGrath, Mara**

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**Park, Justin**

Romero Parks P.S.  
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**R&R Stables & Equestrian Event Center, LLC**

**Ronda Sterley, Ronald Shear**

R&R Stables & Equestrian Event Center, LLC  
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**Stephens, Nick**

Department of Local Services

**Sullivan, Ted**

Department of Natural Resources and Parks

**Whalen, LaDonna**

Department of Local Services