

January 27, 2023

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

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ADDC220405 Waiver**

DMITRIY TISLENOK
Code Enforcement Appeal

Appellants: **Dmitriy and Yekaterina Tislenok**

[REDACTED]
Auburn, WA 98092

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King County: Department of Local Services
represented by **Warren Cheney**
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FINDINGS AND CONCLUSIONS:

Overview

1. The Tislenoks appeal certain permit fees as duplicative, in light of them having previously paid code enforcement penalties related to the violations that triggered the permit application. 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 their appeal.

Background

2. In September 2019, Local Services issued the Tislenoks a notice and order asserting violations for: (1) operating a commercial dog kennel, (2) constructing an accessory structure, (3) remodeling and adding to a barn, and (4) clearing vegetation, all without the necessary permits. Ex. D5 at 001. The Tislenoks did not appeal the notice and order, meaning the asserted violations and their required compliance steps became final and unreviewable.
3. Later, Local Services issued \$18,450 in penalties related to noncompliance with that notice and order. The Tislenoks did not appeal those penalties but instead entered into a June 2022 settlement agreement with Local Services where:
 - Local Services agreed the kennels were no longer in operation and thus were in compliance;
 - The Tislenoks agreed to apply for permits for the barn, accessory structures, and clearing; and
 - Local Services agreed to halve the penalty amount to \$9225.Ex. D5 at 002-03.
4. The Tislenoks later paid the reduced penalties and started the permit process. Local Services invoiced application fees and the Tislenoks objected, requesting Local Services waive all permit fees. Local Services denied the request. Ex. D2.
5. The Tislenoks appealed, this time challenging a subset of the initial invoice. Ex. D2. The invoice listed:
 - A. For the creation of smaller accessory structures,
 - i. an \$841 building review fee, along with
 - ii. an \$841 work-done-without-permit investigation fee;
 - B. For the barn remodel and addition,
 - i. a \$399 building review fee, along with
 - ii. a \$399 work-done-without-permit investigation fee; and
 - C. For the clearing violation, a \$501 review fee. Ex. D2 at 002.
6. The Tislenoks argue that because they already paid code enforcement penalties, they should not be charged the two work-done-without-permit investigation fees or the clearing review fees.

Legal Standards

7. KCC 27.02.040 sets the standard for permit fee waivers:
- A. The director shall have the discretion to waive all or a portion of the fees administered by the department and required pursuant to this title, provided, the waiver is warranted in the director’s judgment. A fee shall be waived if one or more of the following conditions applies to the service for which the fee was assessed:
- i. The service was not performed;
 - ii. The service is duplicative; that is, a service of similar body of work was already performed and fees were collected for that service;
 - iii. The service is not required for permit approval;
 - iv. The service was based on a professional or processing error caused by the department; ...
-
- E. In an appeal of a fee waiver decision, the burden is on the applicant to prove that the particular fee was unreasonable or inconsistent with this title. If the applicant fails to meet that burden, the examiner shall affirm the decision of the director. If the examiner determines that a particular fee was unreasonable or inconsistent with the provisions of this title, the examiner shall modify the fee, order the department to modify the fee in accordance with the examiner’s ruling or provide such other relief as reasonably necessary. If the examiner determines that the applicant is the substantially prevailing party, the department shall waive and refund the appeal fee. The examiner’s decision is final.
- F. In an appeal under this section, the applicant may only challenge the department’s application of the development permit fees provided for in this title to the applicant’s permit and approval. The applicant may not challenge in an appeal under this section the development permit fees in this title.
8. Mr. Tislenok points to a Local Services bulletin that paraphrases the above code, but erroneously cites it as KCC 27.02.020 as the source. Ex. A1. KCC 27.02.040 provides the actual standard. ***Local Services should update its page with the correct code citation.***

Analysis: Clearing Fee

9. We start with the easy question, the clearing review fee.
10. Code enforcement officers are generalist who investigate complaints and determine whether there is sufficient evidence to assert a violation—be it new construction, clearing and grading, accumulation of junk and debris, encroachment into a stream

buffer, inoperable vehicles, etc. For certain violation types, such as junk and debris, code enforcement makes the final determination (subject to an appeal to the examiner) on what constitutes compliance. But for violations that trigger a permit, the permitting side (not code enforcement) determines what documents are required to submit a complete application and what reviews are necessary (drainage, critical areas, building engineering), actually review the application and ensures a proposal meets the code, and then inspects the site and determines whether all the necessary items have been completed.¹

11. This distinction was readily apparent when, at hearing, Mr. Tislenok asked the officer whether, if he removed certain gravel and covered the area with bark, that would be sufficient remediation to resolve the situation, without having to replant vegetation. The officer’s response—indeed the only response she could responsibly have given—was that she is not the one who gets to make those calls; a site development specialist on the permit side needs to review the Tislenoks’ proposal and decide whether their plan meets the relevant regulation.
12. There is not even a hint of the clearing review fees being duplicative of similar work already performed and for which fees were collected.

Analysis: Building-Related Fees

13. For the building-related review of the smaller accessory structures and of the barn, Local Services requests both a building review fee and an identical fee for work-done-without-permit investigation. So, this part of the Tislenoks’ challenge at least has some surface attraction, as the permitting arm *is* charging what could potentially be overlapping, review-related fees. Determining whether the work-done-without-permit investigation fee is actually duplicative of the fee for a similar body of work (the normal building review itself) requires a deeper dive, after disposing of one preliminary matter.
14. Mr. Tislenok pointed to the settlement agreement on the code enforcement penalties as relevant to this discussion. Ex. D5. We do not see anything there that addresses, either directly or indirectly, the amount of *permit fees* (as opposed to the amount of *code enforcement penalties*). The fact that the Tislenoks paid a reduced code enforcement penalty amount might slightly undercut the force of their “We’ve already paid too much” argument, but the terms of the settlement agreement themselves do not play into the duplicative-fees analysis. We do not discuss the settlement agreement further.
15. Turning to the more in-depth analysis, we begin with KCC 27.10.425, the pertinent parts of which say:

¹ Per KCC 27.10.010:

Plan review fees shall compensate [Local Services] for the plan review necessary to determine compliance with approved plans, adopted international codes and other county regulations. The fees shall be collected to compensate [Local Services] for the review of: ... B. Grading and clearing permit applications under K.C.C. chapter 16.82.

- A. Whenever any work for which a permit or application approval required under K.C.C. Title 16, 19A, 20 or 21A has commenced without first obtaining the required permit or application approval or has proceeded without obtaining necessary inspections, a fixed fee shall be charged for investigation of work done without a required permit or approval whether or not a permit or application approval is subsequently issued.
- ...
- F. Property owners not responsible for initiating work without a permit shall be exempted from the fees in this section.
16. KCC 27.10.425 has always had some version of A., charging a fee for work done without permit requirement. The extra fee dis-incentivizes a shoot first, ask questions later approach. Otherwise, one would be no worse off by conducting activities triggering the need for permit, hoping they do not get caught, and if they do get caught simply paying the normal permit fees they would have had to pay if they did not first violate the code. Why not roll the dice and wait and see if anyone comes a-knocking?
17. Years ago, we pushed back repeatedly on requiring extra fees for owners that had no hand in the illegal activity, typically those purchasing property on which a previous owner had undertaken unpermitted work. How, given the purpose of Title 27 to “prescribe equitable fees” (KCC 27.02.010), was it equitable to charge an owner extra permit fees for fixing a violation they inherited? It certainly did not create a rational incentive structure. Local Services responded by amending KCC 27.10.425 with the section F. escape valve for innocent owners. Ord. 17682 § 43 (2013).
18. For the Tislenoks’ *other* property, for which we recently held an enforcement appeal hearing and have a decision due next week, the situation involving their bringing on commercial coaches is different. The Tislenoks approached Local Services *before* they did that work. In next week’s decision we will analyze the coaches, the preconstruction correspondence between the Tislenoks and Local Services, and whether a building permit is required. But *if* a permit is required, it would be inequitable to charge the Tislenoks an additional fee; they did not shoot first and ask questions later.
19. Today’s case, however, fits squarely within the intent of KCC 27.10.425—charging extra to those commencing work that required a permit, without first obtaining a permit or even approaching Local Services about whether their proposed work required a permit. So, is there something about the Tislenoks having paid code enforcement penalties partially related to construction (as well as to clearing) that changes that analysis?
20. Code enforcement penalties do not compensate any Local Services staff (enforcement or permitting). Penalties go into a fund that Local Services can use to clean up a mess when the property owner will not come into compliance, for example, hiring outside

contractors to haul off inoperable vehicles and junk or to dismantle and remove illegal construction. Conversely, permit staff is paid by permit fees that fund permit review.²

21. There is a good argument that code enforcement penalties can *never* impact the permit fee analysis, because a code enforcement penalty is just that, a “penalty,” not a “fee,” and thus KCC 27.02.040.A.ii’s waiver allowance for a “service [that] is duplicative; that is, a service of similar body of work was already performed and fees were collected for that service” could never be triggered.
22. But we do not go that far today. Normally extra fees charged for already-built-construction are appropriate not only as a disincentive but because analyzing already-built-construction requires extra permit staff time to determine preexisting site conditions and exactly what work was done—work not required for a proposal solely involving future work. Yet Local Services acknowledged that there is not always a bright line between what code enforcement does and what permitting staff does. We could envision a hypothetical scenario where the code enforcement review was such that there really is not need for any additional investigation by permit staff, and thus permit staff’s investigation truly would be “duplicative” of work completed.
23. But the Tislenoks have the burden to prove that the particular fee here was unreasonable or inconsistent with this title. KCC 27.02.040. And they do not come close to doing so in today’s case.

DECISION:

We DENY the Tislenoks’ appeal

ORDERED January 27, 2023.



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.

² Code enforcement staff are paid by tax dollars, not permit fees.

**MINUTES OF THE JANUARY 12, 2023, HEARING IN THE APPEAL OF DMITRIY
TISLENOK, DEPARTMENT OF LOCAL SERVICES FILE NO. ADDC220405
WAIVER**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Warren Cheney, Dmitriy Tislenok, and LaDonna Whalen. 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	Waiver request and denial letter for ADDC22-0405
Exhibit no. D2	Appeal, dated November 14, 2022
Exhibit no. D3	Summary of charges for ADDC22-0405
Exhibit no. D4	Summary of charges for ENFR18-0510
Exhibit no. D5	Settlement agreement
Exhibit no. D6	Local Services staff report to the Hearing Examiner
Exhibit no. D7	Witness List

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

Exhibit no. A1	KC Code 27.02.020, submitted January 12, 2023
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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ADDC220405 Waiver**

DMITRIY TISLENOK
Code Enforcement Appeal

I, Jessica Oscoy, 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 January 27, 2023.



Jessica Oscoy
Office Manager

Cheney, Warren

Department of Local Services

Lux, Sheryl

Department of Local Services

Tislenok, Dmitriy/Yekater Mr.

Hardcopy

Whalen, LaDonna

Department of Local Services