February 2, 2023

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR180392**

RANDY WARREN
Code Enforcement Appeal

Location: [redacted] Woodinville

Appellant: Randy and Jennifer Warren
represented by **Bryan Krislock**
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FINDINGS AND CONCLUSIONS:

Overview

1. We grant the Warrens' appeal as it relates to medical hardship. We also find that they qualify as nonculpable owners, deny their request to apply 1989 standards, and explain how non-culpable status could work in the future. And we set permit deadlines.

Background

2. In about 1973, the then-owner of the subject property brought on a 1969 model Skyline mobile home. It does not appear the septic system was ever approved. Ex. A9. There is no record of it having been permitted as a residence, but because permit records pre-1975 are so spotty and hard (if not impossible) to access, Local Services (and we) essentially treat pre-1975 structures as presumptively legally nonconforming.[1]

3. The record becomes clearer circa 1989, when the then-owner brought in a 1968 model Brookwood mobile home to the site and attempted to permit it.[2] In 1989 Public Health rejected adding Brookwood, given the unfit-for-septic soils. Ex. A9. The building permits with Local Services' predecessor agency were not followed through on, and the applications were canceled in 1990 and 1994. Ex. D10.

4. In 2003, Randy and Jennifer Warren leased the property with "2 mobiles, 1 single-wide [Skyline] 1 double-wide [Brookwood]." Ex. A2. Mr. Warren's mom has lived in Brookwood since 2003; the Warrens themselves have not lived on the site.

5. In 2012, Local Services received a complaint from the then-tenant of Skyline related to a substandard dwelling. The then-officer posted Skyline with "Do Not Occupy," communicated with the then-property owner, and left a card at Brookwood (Ms. Warren's residence). Ex. D9. That officer did not see the matter through.

6. In 2016, the Warrens completed their purchase. Ex. D13.

7. In 2018, the current officer inherited the code enforcement case, closing out the case against the past owner and reopening it for the current owner (the Warrens).

8. The Warrens began the permit process, including a septic-related application to Public Health. Ex. D5 at 016. In December 2021, the Public Health sanitarian denied their application, finding no technical justification to allow a secondary dwelling unit to connect to an undocumented septic system, given the lack of adequate soils and depth of soils. Ex. D5 at 014.

9. In February 2022, the Warrens sought a variance from Public Health. The Warrens pointed out that the sanitarian had denied the application based on consideration of long-term options and whether a home could *permanently* be sited on the property. The Warrens stated they were only requesting a *temporary* medical hardship mobile home, which they would then permanently disconnect from the septic when Ms. Warren eventually moves out. Ex. D5 at 012.

10. Public Health found that the property has very high water tables that do not meet the minimum requirements for a conforming septic system, nor is there a feasible option to

[1] The owner normally bears the initial burden to show that the use existed prior to the contrary zoning ordinance in question and 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).

[2] Or perhaps to permit Brookwood and also Skyline. The then-owner applied for not one but two mobile home permits in 1989. Ex. D10. We are not sure what R8906987.

replace or expand the system to allow for a *permanent* second home. Ex. D5 at 002. But in March 2022, Public Health found that there was insufficient evidence of negative health or groundwater impacts to disallow *temporary* septic hook-up for a medical hardship unit, granting the variance. Ex. D5 at 001-04.

11. We went to hearing on January 18. We closed the record the following day. LaDonna Whalen testified for (and represented) Local Services. Randy and Jennifer Warren (represented by counsel) also testified. We found all three witnesses credible.

Medical Hardship

12. Per KCC 21A.32.170:

> A. A mobile home may be permitted as a temporary dwelling on the same lot as a permanent dwelling, provided:
>
> > 1. The mobile home together with the permanent residence shall meet the setback, height, building footprint, and lot coverage provisions of the applicable zone; and
> >
> > 2. The applicant submits with the permit application a notarized affidavit that contains the following:
> >
> > > a. Certification that the temporary dwelling is necessary to provide daily care, as defined in K.C.C. 21A.06 [Note: KCC 21A.06.262 defines "daily care" as medical procedures, monitoring and attention that are necessarily provided at the residence of the patient by the primary provider of daily care on a 24-hour basis.];
> > >
> > > b. Certification that the primary provider of such daily care will reside on-site;
> > >
> > > c. Certification that the applicant understands the temporary nature of the permit, subject to the limitations outlined in subsections B and C of this section;
> > >
> > > d. Certification that the physician's signature is both current and valid; and
> > >
> > > e. Certification signed by a physician that a resident of the subject property requires daily care, as defined in K.C.C. 21A.06.
>
> B. Temporary mobile home permits for medical hardships shall be effective for 12 months. Extensions of the temporary mobile home permit may be approved in 12-month increments subject to demonstration of continuing medical hardship in accordance with the procedures and standards set forth in subsection A of this section.

13. As the Warrens explained, after their employee fixed up Skyline and moved in, he started taking care of handyman tasks for Mr. Warren. That is sweet, but would not, standing alone, qualify under KCC 21A.32.170. However, after the employee brought his

daughters from Mexico, one of them earned her certified nursing assistant certification and began providing care for Ms. Warren, namely:

- checking in with Ms. Warren at least twice daily;
- making sure her medications are in order, as she is prone to take too much or she forgets to take the medication;
- helping her lift and move things that have proven too much after her heart attack;
- regularly checking her vitals; and
- helping with her correspondence related to medication or changes in health and condition.

Ex. A1.

14. Mr. Warren emphasized how effortlessly his mom seems to screw up medications. He testified that without her on-site caregiver he would either have to hire someone to check in on her twice daily or move her.

15. An earlier notes from Ms. Warren's physician merely stated that she was being treated and monitored for her congestive heart failure by cardiology, which says little about any "daily care." Ex. A4 at 001-002. His more recent note is still relatively terse, but notes that:

> Patient is receiving daily care from her neighbor to help with her conditions which include congestive heart failure which requires daily monitoring. Her next-door neighbor's daughter lives on the property with Karen Warren [and] is in the medical field and has been providing her daily care.

Ex. A3 at 001.

16. This is our first case interpreting the medical hardship provisions. Obviously, Local Services should be wary of people trying to scam the system, but there is no whiff of that here. We take judicial notice of the rise in "age in place" policies and programs to prolong the ability of seniors to remain in their current abodes. Homelessness among seniors (and the testimony was that Ms. Warren has limited financial resources) is rising, and helping that vulnerable population keep their current housing promotes theirs and the community's overall emotional, economic, and social well-being. So, we apply a liberal construction to KCC 21A.32.170. And Ms. Warren's set up here seems to be exactly what those policy considerations are getting at.

17. We conclude that the most recent physician's note, as augmented by the caregiver's affidavit and Mr. Warren's testimony, provide sufficient certification that the temporary dwelling is necessary to provide medical monitoring and attention necessarily provided at Ms. Warren's residence by the residing certified nursing assistant on a 24-hour basis.

Innocent Owner

18. Per KCC 23.36.030.B, where

> an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent[, the examiner may waive] strict compliance with permit requirements…to avoid doing substantial injustice to a non-culpable property owner.

19. Local Services clarified at hearing that it was not disputing that the Warrens qualified as innocent owners for the placement and use of the Brookwood, nor for the placement and original residential use of the Skyline, but instead for the continuing use of the Skyline.

20. Local Services presented a solid case for why the Warrens did not qualify as innocent owners on that score. However, when it was the Warrens turn, they successfully refuted most of that.

21. The Warrens explained that when they lease-optioned the property, there was an existing tenant in Skyline. When that tenant moved out, another moved in until 2005. Another tenant stayed in Skyline from the end of 2005 until the spring of 2012. Then a difficult tenant—the one who complained to code enforcement—moved in. Mr. Warren testified that Local Services never contacted them, his mom did not mention receiving a business card, nor did the then-property owner of record.[3] And nothing in Local Services' file indicates any contact with the Warrens themselves. Ex. D12. As the 2018 Local Services letter re-starting the case (this time against the Warrens) stated, "You may or may not be aware that there is an ongoing code enforcement case related to the site." Ex. D14.

22. In April 2014 the "tenant," presumably Ms. Warren, told the Assessor that Skyline was used for storage. Ex. D6 at 004. And that was true at the time. Mr. Warren explained that after the difficult tenant left, he felt exhausted to go through the hassle of renting it out again. That changed only after one of Mr. Warren's employees approached him at the end of 2014. As discussed above with the medical hardship analysis, that tenant has been living there since 2015.

23. The 2018 submittal identifies Skyline as "Storage Room." Exs. D3 at 001, D5 at 005]. The Warrens testified that none of that is their handwriting, and they only saw that drawing well after their contractor submitted it. The Warrens should have, when they saw the previously submitted application, corrected something that was (post-2014) no longer true. Is that enough to fundamentally change our analysis? Not really.

[3] The Warrens were not the recorded owner until 2016. Ex. D13. And if Local Services had contacted the then-record owner, he would have had a disincentive to proactively approach the Warrens with information that would *reduce* the property's value.

24. At the time they entered their lease option in 2003, it was billed as a two-homed property and there was a tenant living in Skyline. We find that the Warrens did not get actual notice about a problem until 2018. But even if they had received earlier notice, the 2012 enforcement dealt with the unit being substandard due to mold, lack of rails, heating, the roof, trees near a chimney, etc. We return to those issues in the final paragraph, but those are the types of issues L&I inspects to determine habitability—*not* zoning/septic stumbling blocks that could prevent even a pristine Skyline from being lived in.

25. We find that the Warrens have affirmatively demonstrated that adding a second dwelling unit was caused by a past owner and without the Warrens knowledge or consent. The Warrens qualify as nonculpable owners. What to do with that information is more nuanced.

26. Where we enter an order paving the way to legalize something which could not otherwise be legalized, we are essentially allowing creation of something akin to a legal nonconformance. And allowing that is "by definition, inimical to the public interest." *Erickson & Assocs., Inc. v. McLerran*, 123 Wn.2d 864, 870, 873, 74 P.2d 1090 (1994). So, it requires a careful balancing between public and private harms. And we have little of those pros and cons in our current record, as the Warrens now only seek approval for *medical hardship* mobile home—a qualification which does not turn on whether or not they are innocent purchasers.[4]

27. The one specific present-day ask from the Warrens is that we order Local Services to review their future building permit application under the codes in place when the original owner started the permit process in 1989. Where a permit application is cancelled, the agency (and even examiner) generally lacks authority to reinstate that application, and there is no vesting. *Graham Neighborhood Ass'n v. F.G. Associates*, 162 Wn. App. 98, 101, 106, 120, 252 P.3d 898 (2011). Today's building codes are, almost by definition, better and more protective of resident's safety than a quarter-century old code. And we doubt whether any current Local Services reviewers have expertise with the 1989 version of anything. Unless the Warrens are unable to obtain a permit for the medical hardship unit because of some intervening code change, we will not use our KCC 23.36.030.B powers to order a different review standard. The normal requirement that a permit gets reviewed under the rules in place at the time a completed permit application is submitted applies.[5]

28. The Warrens mentioned wanting the option of someday trying to legalize the second mobile homes as a permanent ADU (presumably if mom or the caregivers move out and the medical hardship exemption no longer applies). That seems unlikely.

    - Even under the older, less groundwater-protective regulations of the 1980s, Public Health rejected adding Brookwood. Ex. A9.

[4] If we are incorrect on that, see the below discussion on KCC 20.20.030.D.

[5] If indeed it turns out that there is something in the post-1989 codes that would result in denying the medical hardship building application, the Warrens can follow the KCC 20.20.030.D process described in the next paragraph for bringing that to our attention.

- In 2021, Public Health rejected a two-home application, finding the property has very high water tables not meeting the minimum requirements for a conforming septic system, nor a feasible option to replace or expand the system to allow for a permanent second home. Ex. D5 at 002.

- The Warrens' engineer observed that the southwest portion of the property was impacted by buildings and the well radius, the northern portion has fill material, a large off-site wetland sits to the north, the area east of the drain field has seasonal standing water and soils too saturated to support the septic system, and finds no available on-site area to expand the current drain field or establish a reserve area. Ex. D5 at 017-018.

- While Public Health allows ADU to hook up to the same septic as the main, the system has to meet current codes or at least have the capacity to upgrade it (which Public Health had already determined it does not. And any update would likely be well north of $30,000.

So, it appears unlikely the Warrens could find a way through the septic conundrum such that a *zoning* restriction would be what was keeping them from legalizing a permanent second dwelling unit.

29. Yet that is putting the cart before the horse. If in the future the Warrens foresee a viable septic path and submit preapplication materials to Local Services for an ADU and, for example, at the preapplication meeting it turns out the unit is too large, or the property too small, to meet the applicable ADU zoning requirements, Local Services can issue a preliminary determination that the proposed development is not permissible; the Warrens can then appeal that determination. KCC 20.20.030.D. At that point we could fully develop the factual record, consider all the legal requirements, entertain all the arguments, and then decide if or how to apply the innocent-owner provisions. We will not pre-judge that outcome.

Habitability

30. Although Skyline qualifying as (allegedly) substandard was what prompted the 2012 enforcement complaint, the notice and order currently under appeal did not reference that. Ex. D2. And it only mentioned a mobile home, not homes. So, habitability is beyond the scope of today's appeal. Certainly, looking at the 2012 records there were obvious problems with Skyline. Ex. D9. And it is not clear if Brookwood was ever inspected. And both those units (1969 and 1968 respectively) are well over half a century old.

31. The Warrens' replaced the roofs, and current tenant's work may or may not have satisfactorily corrected Skyline deficiencies.[6] But habitability was not an issue we set for hearing, nor were the Warrens prepared to fully address it. The Warrens *should* arrange for an L&I inspection, and nothing we say today restricts Local Services from filing a

[6] The 2012 tenant turning on a *humidifier* (not de-humidifier) in our region is truly bizarre and might very well account for the mold issues. Ex. D11. But that is for an inspector to decide.

later notice and order if not timely completed. But that is not part of the notice and order, appeal, or our decision on that appeal.

DECISION:

1. We grant the Warrens appeal related to medical hardship qualification under KCC 21A.32.170.A and qualification as a non-culpable property owner.

2. The Warrens shall, by **March 31, 2023**, submit a complete medical hardship mobile home application for Brookwood. Thereafter, they shall diligently pursue that, including deadlines for later information submittal.

3. No penalties shall be assessed against the Warrens or the subject property if the above actions are completed by the deadlines, or by any reasonable deadline extensions Local Services provides. If not, Local Services may issue penalties retroactive to today.

ORDERED February 2, 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.

MINUTES OF THE JANUARY 18, 2023, HEARING IN THE APPEAL OF RANDY WARREN, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR180392

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Bryan Krislock, Randy Warren, and Jennifer Warren. 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	Notice and order, issued January 31, 2019
Exhibit no. D3	Appeal, received February 25, 2019

Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Public Health Decision on variance
Exhibit no. D6	Department of Assessor report on parcel #3026069070
Exhibit no. D7	Department of Assessor Historical report on parcel #3026069070
Exhibit no. D8	Code Enforcement notes from case #ENFR12-0404
Exhibit no. D9	Officer Garnet Photos of Do No Occupy posting
Exhibit no. D10	Parcel #3026069070 permit history
Exhibit no. D11	Mold inspection report provided by tenant
Exhibit no. D12	Email exchanges between tenant and Officer Garnett
Exhibit no. D13	Warren Deed exchange
Exhibit no. D14	Code Enforcement correspondence

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

Exhibit no. A1	Declaration of Itzel Rubi Escobar Rojas
Exhibit no. A2	Residential Lease dated February 19, 2003
Exhibit no. A3	Letter from Dr. Steven P. Hockeiser with Kaiser Permanente dated 12.22.2022
Exhibit no. A4	Prior letters from Dr. Steven P. Hockeiser with Kaiser Permanente dated 1.24.2022 and 5.13.2022
Exhibit no. A5	Affidavit of Randy Warren re: Mobile Home
Exhibit no. A6	ALTA Title Commitment
Exhibit no. A7	King County Assessor Property Information
Exhibit no. A8	On-Site Septic System Property Transfer Report
Exhibit no. A9	Health Department Letter
Exhibit no. A10	Application for Approval Sewage Disposal System

February 2, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR180392**

RANDY WARREN
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 2, 2023.

Lauren Olson

Lauren Olson
Legislative Secretary

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Department of Local Services

Campbell, Thomas
Department of Local Services

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