

August 30, 2023

**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. **ENFR200688 Waiver**

JAMES AND KIM MAGNUSON
Code Enforcement Appeal

Location: [REDACTED] Renton

Appellants: **James and Kim Magnuson**
[REDACTED]
Renton, WA 98056
Telephone: [REDACTED]
Email: [REDACTED]

King County: Department of Local Services
represented by **Jeri Breazeal**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 477-0294
Email: jeri.breazeal@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. James and Kim Magnuson challenge \$9600 in code enforcement penalties the Department of Local Services (Local Services) assessed them. 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 find that penalties were correctly issued but that the amount was excessive. We reduce the penalties by 80%, to \$1920.

Background

2. We closed our September 2022 decision with the following paragraphs:

Mr. Magnuson shall submit a complete clearing/and grading application to Local Services by **November 14, 2022**. Per paragraphs 14 and 22 above, Mr. Magnuson’s application should map precisely what he cleared and where and how he plans to address that, and Local Services can provide the applicable replanting requirements consistent with the most protected class of mapped critical area (and buffer) where the clearing took place. Thereafter, Mr. Magnuson must meet all requests for information and diligently complete the permit process.

If Mr. Magnuson wants to keep the tiny house permanently on the property, he would start by submitting a complete application to Public Health by **November 14, 2022**.

No penalties shall be assessed against James and Kim Magnuson or the subject property if the above actions are completed by the above deadlines or by any reasonable extension Local Services provides. If not, Local Services may issue penalties retroactive to today.

3. Mr. Magnuson attempted to submit a complete clearing grading application on November 1, two weeks before the deadline. However, it was returned to him as “incomplete” the following day. Mr. Magnuson concluded that he would be unable to put a site plan on the required form and that he needed to retain a consultant to help him with his application.
4. As to the tiny house, Mr. Magnuson decided not to move forward with permitting and instead to remove it from his property. The ground was too wet to take it out over the winter, and removal was a more involved process than simply dragging it out on a truck.
5. In January 2023, Local Services issued \$9600 in penalties. Later in January, Mr. Magnuson submitted a penalty waiver request. In February, Mr. Magnuson (or his consultant) submitted a complete site plan. He hired people to break the tiny house into parts, and then to use an excavator to get it all out. It was completely removed at some point in spring or summer, and the plants started to regrow in the former footprint. Exs. A1-A5.
6. In June, Local Services denied the penalty waiver request. Mr. Magnuson promptly appealed that. We went to hearing on August 24.

Legal Standards

7. 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.

8. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3.

Analysis

9. As of the January date Local Services issued penalties, neither a completed clearing permit application nor a permit for the tiny house had been submitted, the tiny house was still on the property. So, Mr. Magnuson has not shown that civil penalties were “assessed after achieving compliance.”
10. If, at some point before Local Services issued penalties in January, Mr. Magnuson had contacted Local Services, explained the difficulties he was running into (both with the clearing permit application and with removing the tiny house) and requested a deadline extension, and Local Services had then denied that request, we would likely have found his request (depending on how long he was asking for) to be for a “reasonable extension” and would likely have concluded that the penalties were erroneous in their entirety. However, Mr. Magnuson did not ask for an extension. So, at the time Ms. Breazeal reviewed the file in January, the state of affairs she had in front of her were:
- a complete site plan had not been submitted by the November 14 deadline nor even by the time of her January review [the revised site plan did not come in until February];
 - no application had been filed to keep the tiny house, and the tiny house was still on the property, fully intact (exhibit 6); and
 - no deadline extension had been requested.

Mr. Magnuson has not shown that civil penalties were “otherwise erroneous.”

11. As to the penalty amount, the April 2022 notice and order listed the applicable penalty for the grading violation as \$40/day for the first month, doubling to \$80/day thereafter, and for the construction violation at \$65/day for the first month, doubling to \$130/day thereafter. Ex. D2 at 002. So, two months of penalties equated to \$9450, plus a \$150 reinspection fee, bringing the total to the \$9600 Local Services assessed. We understand why Mr. Magnuson would think Local Services was being “aggressive” in penalizing him with a high dollar amount, but the standard procedure is for the officer to simply follow the notice and order, assess one month of the penalties at the regular rate, a second month at double the rate, and close the enforcement case. Conversely, trying to set an amount *different* than what was spelled out in the notice and order would inject a component of subjectivity that might not be wise at that level of review.
12. However, the examiner is explicitly allowed—and required—to assess whether the penalty amount is “excessive *under the circumstances.*” The two-month deadline we set in September 2023 anticipated Mr. Magnuson being able to complete and submit a site plan

on his own. When he was unable to do that, it understandably took significant time to engage a professional and for that professional to submit a site plan. And, as dismantling and removing the tiny house proved more involved, and removal complicated by the rainy season, extending that period was reasonable as well.

13. Penalties likely could have been entirely avoided (along with the need for a penalty waiver/appeal process) if Mr. Magnuson had called Ms. Breazeal in November, December, or most of January, explained the hurdles he was facing, and requested a new deadline. He elected not to do that, but after penalties were issued he submitted a permit application and completely removed the tiny house, meaning he is back on track to cure the clearing violation and he has already resolved the construction violation. On our facts, Mr. Magnuson has shown that civil penalties were “excessive under the circumstances.” We reduce the penalties by 80%.

DECISION:

We reduce the \$9600 penalty to \$1920.

ORDERED August 30, 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 AUGUST 24, 2023, HEARING IN THE APPEAL OF JAMES
AND KIM MAGNUSON, DEPARTMENT OF LOCAL SERVICES
FILE NO. ENFR200688 WAIVER**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were James Magnuson, Kim Magnuson, and Jeri Breazeal. 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 Staff report to Hearing Examiner |
| Exhibit no. D2 | Copy of Notice & Order issued April 21, 2022 |
| Exhibit no. D3 | Copy of the Hearing Examiners Decision dated September 13, 2022 |
| Exhibit no. D4 | Copy of the Waiver request received January 26th, 2023. |
| Exhibit no. D5 | Copy of Appeal received June 13th, 2023. |
| Exhibit no. D6 | Copy of the waiver decision. |
| Exhibit no. D7 | Pictures dated January 10th, 2023. |
| Exhibit no. D8 | Copy of incomplete application notice |

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

- | | |
|----------------|--------------------------------|
| Exhibit no. A1 | Photograph of subject property |
| Exhibit no. A2 | Photograph of subject property |
| Exhibit no. A3 | Photograph of subject property |
| Exhibit no. A4 | Photograph of subject property |
| Exhibit no. A5 | Photograph of subject property |

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR200688 Waiver**

JAMES AND KIM MAGNUSON
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, Quadiant-Impress, 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 30, 2023.



Lauren Olson
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

Magnuson, James/Kim

Hardcopy

Whalen, LaDonna

Department of Local Services