

June 13, 2023

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KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Local Services file nos. **ENFR230049, GRDE210123 and DWEL210267, and ENFR200651**

PETER AND LISA SCHMIDT

Code Enforcement Appeal

Location: [REDACTED] Enumclaw

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FINDINGS AND CONCLUSIONS:

Overview

1. This decision analyzes the third, fourth, and fifth appeal hearings involving a long-running code enforcement and permitting dispute between the Department of Local Services (Local Services) and Lisa and Peter Schmidt. We held three separate hearings in May 2023, which we address in today’s consolidated decision.¹ 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:
 - overturn two of the code enforcement penalties and uphold the third;
 - reject four of the five permit review fees the Schmidts challenge, while reducing the charge on the fifth; and
 - reject the sole basis offered for Local Services’ decision not to extend the Schmidts’ building permit, and we thus overturn the notice and order for construction without a valid permit.

Prior History

2. In 2020, the Schmidts cleared forest and wetland areas without first obtaining the necessary permits. This prompted a neighbor complaint to Local Services. ENFR200651. In 2021, Local Services had a prescreening meeting with the Schmidts, and the Schmidts later applied for a grading permit to restore the

¹ Because we admitted three separate sets of exhibits at three separate hearings, there are, for example, three sets of “Exhibit A1.” It should be clear from the context which hearing record we are citing to.

illegally-cleared area and a permit for the dwelling unit and barn they wanted to construct.

3. In DWEL210267 (SWO) and ENFR220144, the Schmidts appealed an order that they stop work until they applied for, and received, a revised permit. In our April 2022 decision,² we rejected the Schmidts’ argument that they were proceeding in accordance with their previously-approved plans, finding the Schmidts had built the driveway/barn/pad over a 100+ feet from where they were approved to build, along with other deviations, which necessitated a permit revision.
4. We also upheld the stop work order. While explaining why we were “not particularly pleased with Local Services permitting arm” in that matter, given Mr. Schmidt’s confrontational approach we were not convinced that, absent a formal stop work order, Mr. Schmidt would have refrained from continuing construction solely on a field inspector’s instruction to pause certain work until a permit revision was submitted, reviewed, and approved.
5. In ENFR200651, the Schmidts appealed penalties relating to alleged violations of a stop work order for beginning construction activities before the allowed start time on two days in February 2022. In our August 2022 decision,³ we found the testimony and video about February 5 persuasive, rejected Mr. Schmidt’s claim that the timestamps were manipulated, and upheld that violation and enforcement penalty. We did not find the testimony or evidence about February 8 persuasive, and we overturned that violation and enforcement penalty.

Hours of Operation (ENFR200651)

Introduction

6. Local Services issued the Schmidts penalties for allegedly working outside of approved hours and thus violating the stop work order on August 13, September 23, and October 8, 2022. The Schmidts sought a waiver, but which Local Services denied. The Schmidts appealed that to us, and we held a hearing the morning of May 16.

Legal Standard

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

² https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2022/2022%20Jun%20Jul/DWEL210267_ENFR220144_Schmidt.ashx?la=en.

³ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2022/2022%20Aug%20Sept/ENFR200651_Waiver_Schmidt.ashx?la=en.

August 13, 2022

8. Peter Mensonides, the farmer next door to the Schmidts, explained his agricultural operations, including all-hours operations during certain times of the year, especially in the odd-weather summer of 2022. He described the agricultural work the Schmidts were undertaking on August 13. Ex. A26.
9. Mary Ann DeMoss presented video of, and testimony about, the Schmidts moving equipment and boxes within the construction site area (not out in the agricultural fields) that evening. Ex. D8.B.
10. Sue Wallace observed the same equipment and activity Ms. DeMoss observed. She also presented video of a truck coming in and depositing dirt in what she testified was nowhere near the hayfield. Ex. D8.A.
11. Ms. Schmidt explained the type of equipment (a JLG) shown in the DeMoss video, one they used for dragging hoses. The “box” is not a separate box, but an attachment to the JLG itself, which they use for things like dragging hoses to and from the agricultural fields.
12. Mr. Schmidt explained that the JLG is used for moving hay bales, water hoses and pallets. The “box” has their firehoses and sprinklers. They store the equipment in the developed area, what he described as a “laydown area,” not in the hayfields themselves. Between running loads of haybales to Mr. Mensonides that day, they were using the hoses to water the dirt they were dumping in the hayfield. They were only doing ag-related work on August 13, work they advised the previous code enforcement supervisor ahead of time that they would be doing.
13. Conceivably there were two outside-of-permitted hours violations on August 13, one involving the equipment in the DeMoss video and one involving the truck dumping dirt in the Wallace video, either one of which could conceivably support a violation and penalties for that day. However, Local Services denied the penalty waiver for August 13-related penalties based only on “use of JLG 1255 telehandler or forklift onsite,” which it described as “evidence of a forklift being used outside of approved hours.” Ex. D5 at 002-03. The truck with dirt was not a part of Local Services’ case, and thus we confine our review to the JLG.
14. Local Services’ assessment of what is allowed and not allowed sets a reasonable standard:

[A]ny activity on the construction or restoration areas of the property, including but not limited to setting up to pour concrete, watering the newly poured concrete, watering the wetland restoration sites, or any other activities covered under the permits, would be considered work and could not be conducted outside of approved hours.

Ex. D5 at 003.

15. When we viewed exhibit D8.B prior to our hearing, our assessment was the same as Ms. DeMoss, Ms. Wallace, and code enforcement: the location was indisputably within the construction/restoration site footprint and thus not exempt activity. However, between re-watching the video and the Schmidts' explanations, we find the most plausible scenario is that the JLG activity within the construction/restoration area was limited to repositioning and storing equipment from agricultural work occurring *outside* the project footprint. It is a close call but we do not find that re-housing equipment qualifies as “activity” within the project area. The Schmidts have met their burden of demonstrating that civil penalties for August 13 were assessed in error.

September 23, 2022

16. Unlike August 13, there is no question that the activity on September 23 was project-related, and not exempt agricultural activity. The question is whether project “work” commenced before 7:00 a.m. Deciding that here involves both a factual and legal component. We start with the factual, before moving onto the legal.
17. Ms. DeMoss testified there was a lot of ongoing activity well before 7:00 a.m. onward, and she provided video. Ex. D8.C. She agreed that she did not actually see concrete being poured, just that there was a lot of hydraulic sounds, well beyond the sound of trucks idling. She was candid that she was not sure exactly how construction worked.
18. Ms. Wallace also provided video. Ex. D8.D. She was more certain (then Ms. Wallace) that concrete was being poured before 7:00 a.m.
19. Ms. Schmidt pointed out that neither video showed anyone out of the trucks and moving, which is what would happen as soon as concrete starts being pouring.
20. Mr. Schmidt explained that he had called Local Services the day before, explaining that they would be setting up the day before but not pouring concrete until 7:00 a.m., and that is what they did. *See also* Ex. A27. Trucks have to keep their mixing drums going or concrete will harden. To pour concrete requires people to hold the boom, people to scree the concrete, and a person to communicate between the operator and the screeners.
21. The Wallace video does not show concrete being poured; the end of the boom truck extension is well up in the air. The DeMoss video also shows the end of the boom truck extension well up in the air, and it does not show workers walking around or anything being poured. While Ms. Wallace claimed she saw concrete actually being poured, the video does not show that, and it would be bizarre that the Schmidts would explain to Local Services beforehand exactly what they would be doing and when, set up the boom the night before, gather all the workers at the site and then...start pouring concrete before 7:00 a.m., knowing Ms. DeMoss and Ms. Wallace would likely be watching? Factually, the Schmidts have demonstrated that they did not start pouring concrete before 7:00 a.m.

22. Local Services' case, however, was more of a mixed question of fact and law, and it did *not* turn on concrete actually being poured before 7:00 a.m. Jeri Breazeal articulated that because the purpose of construction-related, hour-of-day restrictions are to limit construction noise bothering neighbors in off-hours, things like running concrete drums make more noise than simply pulling up and idling trucks and thus should not occur before or after hours. That is a fair point, a reasonable interpretation of the restriction, and (unlike dirt-dumping or actual concrete-pouring) was precisely the basis for Local Services denying the penalty waiver. Ex. D5 at 002-03. It is a solid interpretation going forward. However, we injected some ambiguity in our April 2022 decision, where we wrote that:

[T]rucks 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 moving dirt, started before or continued after the allowed hours would there be a violation.⁴

As that particular dispute involved only trucks entering the site, idling, then performing their final tasks there (dumping fill or moving dirt), we were not envisioning an in-between category. We agree that tasks like rolling a cement mixer or setting up a boom or other hydraulic activities make considerably more noise than simply trucks idling and must—in the *future*—be confined to normal construction hours. But because Mr. Schmidt's September 23 activities did not violate the standard as we under-described it in April, it would be unjust for us to uphold those penalties today.

23. The Schmidts have met their burden of demonstrating that civil penalties for September 23 were assessed in error.

October 8, 2022

24. As with August 13, October 8 turns on whether the outside-approved-hours work within the construction/restoration areas was exempt agricultural work. Ex. A34 (Local Services explaining that “clearing out rocks and other obstacles in the field to prepare it for seeding is not a stop work order violation.”)
25. Ms. DeMoss testified to work done on the east side of the building pad, then traveling across the site. Exhibit D8.E shows an excavator finish unloading something in the project area, then move back west. Exhibit D8.F appears to show the excavator in the construction area.
26. Ms. Wallace explained the noises she was hearing and what she saw that morning. Exhibit D8.G shows a truck driving in. Exhibit D8.H shows the excavator moving to the west of the property, in what appears to be the hayfield. And exhibit D8.I shows the excavator dumping a load in what appears to be the project footprint, then moving back out.

⁴ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2022/2022%20Aug%20Sept/ENFR200651_Waiver_Schmidt.ashx?la=en at 3.

27. Ms. Schmidt was not there, but Mr. Schmidt explained that they stage everything in the construction area, and that that day they were going out to the hayfield to take out rocks to prevent those rocks from damaging agricultural equipment. He agreed he had not looked at the video.
28. We find that the most plausible factual scenario is the Schmidts took rocks out of the hayfield as part of agricultural-improvement effort, and deposited at least some of them outside the agricultural areas and within the construction/restoration areas. Unlike August 13, where work inside the project footprint was limited to repositioning agricultural equipment, dumping boulders—especially given the grading aspect of the construction and restoration projects and the shifting site plans—was not exempt work.
29. The Schmidts have not met their burden of demonstrating that civil penalties for October 8 were assessed in error.

Permit Fees PREA200203, DWEL210267, and GRDE210123

Introduction

30. The Schmidts initially challenge permit fees associated with files PREA200203, DWEL210267, and GRDE210123.
31. There was no record of the Schmidts appealing Local Services' March 2022 fee waiver denial letter in PREA200203 or paying the \$50 appeal fee, either by the April 2022 deadline or any time thereafter. After holding a motion hearing, we dismissed their challenge as time barred. The Schmidts timely appealed the DWEL210267 and GRDE210123 fee waiver denials, and we went to hearing on those the afternoon of May 16, 2023.
32. It is a little difficult to figure out exactly what fees are in what category. Local Services understood the issues as \$7880 assessed after intake at the time of permit approval, then other fees challenged separately. When the rural ombuds summarized the Schmidts' challenge, she understood the \$3664 drainage review and \$204.50 recording fee to be *part* of the \$7880 challenge, not separate items. Ex. D4 at 003-04. We do the best we can to parse it.

Legal Standard

33. The standard comes from KCC 27.02.040, which states that:
 - 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.

GRDE210123

- 34. The Schmidts challenge \$7880, or some such number, in fees assessed after the application intake, asserting unfair surprise.⁵ Surprise is a serious concern. Local Services should do its utmost to advise applicants, during the pre-application process, what type of fees they may eventually be expected to pay. Even if Local Services will not know exactly what review, or intensity of review, is necessary until after it assesses a complete application, if it is not already doing so, in the future it should advise would-be applicants, in writing, of *ranges* of possibilities before they commit to a project. While unfair surprise is not one of the four items listed as a waiver ground, it could be ground that we could find would make at least a portion of a particular fee unreasonable.
- 35. Today is not one of those case because in April 2021—after their October 2020 preapplication conference but prior to their October 2021 permit application—the Schmidts challenged \$10,700 in clearing and grading fees. Ex. D1 at 001. So, the \$3906 worth of fees Local Services listed in September 2021 as due at that time of application GRDE210123 (exhibit A12) obviously could *not* have been the only fees on the table, leaving almost \$7000 in fees Mr. Schmidt knew enough about to challenge. Warren Cheney testified that an estimated \$10,000 or so in fees were disclosed during the October 2020 conference. The Schmidts have not, for example, submitted a copy of the

⁵ The remaining balance due at time of permit approval in April 2022 was \$7820.50. Ex. A8.

follow-up letter Local Services sent after that meeting that might refute that. The Schmidts have not carried their burden of demonstrating that these particular fees were unreasonable or inconsistent.

36. Second (or perhaps part of the \$7880 claim), the Schmidts assert that \$3,664 in drainage review fees were redundant because they also paid drainage review fees related to the building permit (DWEL210267). However, the clearing and grading work the Schmidts undertook without authorization, including the driveway, extended far beyond the building footprint for their house/barn project and required significant restoration work.⁶ So, drainage review on the house/barn project (and drainage reviews associated with that construction) was only a subset of the drainage review the Schmidts' activities triggered.
37. The twist here is that, during a Covid period where Local Services was prevented from certain review work, Local Services arranged for State Ecology to step in and facilitate reviewing the Schmidts' violation and restoration efforts. The Schmidts assert that that because Ecology did the work, Local Services should not have had to review any of that. Mr. Cheney asserts that the County still had to ensure that the county code was followed, and thus the normal review fee was appropriate.
38. We think the truth lies somewhere between those poles. Yes, Local Services could not simply rubberstamp the work that Ecology did, and it needed to ensure county requirements were met. But it should have been a *less* intensive review than if Ecology had not always carried a good chunk of the load and figured out what restoration was appropriate to mitigate the violation. While we agree that drainage review beyond that undertaken for DWEL210267 was required and not entirely duplicative of Ecology's work, we find it unreasonable that there was no reduction to reflect that Ecology-accomplished review. We cut the \$3664 fee in half, to \$1,832.⁷
39. Third, the Schmidts assert that \$204.50 was duplicative because the Schmidts already recorded that. However, there is a difference between the *covenant* the Schmidts recorded (which relates to stormwater maintenance) and the *critical areas notice* Local Services recorded (which relates to where on the property critical areas and their buffers are). Those are not entirely unrelated, but they are two different recordings getting at two different things.⁸ The Schmidts have not carried their burden on recording fees.

DWEL210267

40. In our April 2020 decision, we ruled that the Schmidts had so departed from their originally approved plans that Local Services was correct to require them to submit a revised application. We wrote that:

⁶ Exhibit A7 provides a depiction of the “bubble area” being reviewed as part of the building permit, a small subset of the work the Schmidts undertook.

⁷ “If the examiner determines that the applicant is the substantially prevailing party, the department shall waive and refund the appeal fee.” The Schmidts are not a substantially prevailing party, prevailing on only a small subset of their fees they challenged. KCC 27.02.040.E.

⁸ For example, exhibit A8 list these as two different checkbox items.

The Schmidts also challenge the fees they were required to pay on their 2022 permit resubmittal. They can submit a fee waiver request within 21 days after final permit approval by Local Services. KCC 27.02.040.B. If what the Schmidts mean is that they should not have been required to submit a new permit application, and thus should not have been charged *any* fees, that argument is a non-starter; the Schmidts triggered the need to submit a new permit application when they elected to substantially change the footprint, as well the content (like gravel to asphalt), of their project from what had been approved in December. KCC 20.20.080.B. However, as with any other permit application, they are free to challenge the *quantum* of those fees. *See* KCC 27.02.040.A (setting waiver criteria).

41. Local Services charged \$599.25 for the resubmittal review. Per code, the default resubmittal fee is 25% of the initial review fee. KCC 27.10.580.F. The initial site review for a custom home is \$2397, so 25% of that is \$599.25. Mr. Schmidt acknowledged at our May 16 hearing that Local Services probably spent at least six hours of review. The Schmidts have not met their burden on DWEL210267.

Permit Renewal (ENFR230049 and DWEL210267)

Introduction

42. Because, as discussed below, Local Services narrowed its grounds for not renewing the permit to a single phrase in a single code section, we do not spend much time summarizing or analyzing the majority of the testimony or argument, items we thought would be relevant but turned out not to be.

Legal Standard

43. The appeal is technically from a notice and order, ENFR230049, citing the Schmidts for continuing construction on an expired permit. Ex. D2. Code enforcement bears the burden of proof on enforcement actions. HER XV.E.2. However, the crux of the matter is whether the permitting arm was correct in declining to renew the permit, which led to that later citation for working with an expired permit; the Schmidts bear burden of showing Local Services' permit decision was incorrect. HER XV.E.1.

Testimony

44. Code enforcement officer Jeri Breazeal testified about the nature and extent of the notice and order.
45. Mr. Schmidt explained his daughter's unsuccessful efforts to timely mail a renewal application prior to the December 2022, permit expiration, an application the postal service returned much later. He answered questions about initial unpermitted activities, progress with his permits, and work after he received the cancellation notice. He agreed he used racial slurs, called Local Services' director 200+ times, called another employee more than that, and asserted that phone calls are the only way he does business.

46. Demi Schmidt explained that she tried to help her parents renew their permit before the deadline. After finding no information on mybuildingpermits.com, she notarized the letter and put it in the mail. Months later the letter was returned as undelivered.
47. Inspector Matthew Becker discussed his various inspections. He noted it was very uncommon for home construction permits to be completed in the year, so they get renewed. He expected the Schmidts' permit would be renewed because they all get extended. Other than instances where someone was not actively working on the project or had sold the property, he had never seen a renewal request denied.
48. Rural Ombuds Elizabeth Hill discussed her conversations with Local Services, the specific items in dispute, and what work remained to be done. She tracked down the log from the notary Demi Schmidt used for the permit renewal. And she discussed her conversations with:
 - Permitting division director Jim Chan, who mostly talked in their December 21, 2022, conversation about frustrations working with Peter Schmidt, the number of calls, and the way Mr. Schmidt talked to people.
 - Building official Chris Ricketts, who observed that, in deciding whether to renew a permit or not, he looks at what activities have been completed, whether there is active work, and a history of inspections. He noted that if someone is simply late on getting in their renewal paperwork, that is not a problem and they extend anyway. While work happening over many years is problematic, extensions at the one-year mark are pretty much automatic.
 - Kim Simpson, the permit intake manager, who explained that for extensions at the one-year mark, they do not even bother Mr. Ricketts, and just renew it. They elevate it to Mr. Ricketts only for things older than a year.
 - Director John Talyor, who said he would run to ground every code enforcement complaint on the Schmidts.

She was not even aware of the null-and-void language before this case, as it had never been an issue.

49. Ms. Simpson agreed that they did not send out a warning notice to the Schmidts ahead of the expiration date regarding the Schmidts' need to renew the permit, and that this absence was not unusual. When a renewal comes in after the expiration date unless there is some other disqualifying issue [i.e., like lack of progress, no inspections], they renew it. In this case, management advised them not to. They do not typically send out expired permit notices. She found no record of any permit expiration notices sent out to anybody between January 2019 and March 2023.
50. Mr. Ricketts explained that he was not aware of any instance where a renewal was denied specifically because the request came in after the deadline. They would not just look at whether the renewal was late and the null-and-void language, or

evaluate the question on silo, but would instead evaluate all the factors, such as substantial improvements, code enforcement actions, corrections not being addressed, and whether the permit was so old that the applicable codes had changed in the interim. Since December 2022, there have been no trainings or memos on changes in how they are to handle renewals. If a renewal issue came up today, he would evaluate the same way he would have prior to December 2022.

51. Mr. Ricketts had never seen an expiration letter like the one sent to the Schmidts. He was not aware of anything related to the Schmidts' application that would have justified nonrenewal. Normally, the renewal decision for a first-year permit would not have even been elevated to him, because staff would have renewed it. It was very unusual that the renewal decision for a single-family home to not only come to him but to actually go above him to upper management.
52. We discuss Mr. Chan's and Mr. Rowe's testimonies below.

Analysis

53. A neutral observer would be forgiven for reading the rural ombuds report and assuming Mr. Schmidt was the garden-variety applicant. The sole analysis of Mr. Schmidt's behavior was that his "pattern of calling management repeatedly has not helped Mr. Schmidt." Ex. A2 at 003. That ignores the reality of Mr. Schmidt's egregious behavior. Mr. Schmidt is unlike any participant we have seen in our hundreds, if not thousands, of land use cases. It was not simply Local Services "allowing their frustration with interpersonal relationship to cloud their judgments," as the rural ombuds minimized it. Ex. A2 at 012.
54. On the examiner end, despite our repeated counseling to Mr. Schmidt that we could not take *ex parte* communications on substantive matters and that he (or Ms. Schmidt) would have to reduce those to an email and cc the other party, Mr. Schmidt continued to leave innumerable voicemails, along with countless other calls staff had to field, wasting valuable staff time on *ex parte* communications staff were not allowed to share with the decision-maker (the examiner).
55. As we observed, while staff screens examiners from such comments, the mere fact staff had to devote so much time to one person—versus the hundreds of people that participate in an examiner process each year—was an inequitable, not to mention inefficient, distribution of county resources. We explained that staff should be allocating their time more efficiently to providing services to a wider panoply of customers, not devoting an inordinate time to being a sounding board for one person's barrage.
56. As Mr. Schmidt had demonstrated a flagrant disregard for our rules on *ex parte* communications and staff's time, we had to bar him from calling our office again, restricting communications to either emails or Ms. Schmidt's phone calls.⁹ It was

⁹ As discussed below, there has been nothing—nothing—objectionable about Ms. Schmidt's communications, on any level.

the only time in our decade-plus as examiner that we essentially needed to enter a cease-and-desist order, and we have dealt with a large number of demanding and inappropriate participants.

57. We were not alone in this- Mr. Schmidt also went after his councilmember. While his councilmember originally intervened on his behalf with Local Services, the nature of Mr. Schmidt’s contact became “such that [the councilmember had] no choice but to ask you not to contact us further.” The councilmember noted that, despite his request that Mr. Schmidt route his correspondence through the office, Mr. Schmidt “continued to make repeated and inappropriately timed phone calls to my personal cell phone at 5 AM in the morning during the weekend on a regular basis.” Ex. A3 at 011.
58. None of that touches the tip of the iceberg of his conduct with Local Services, including:
- Mr. Schmidt leaving over 200 messages for one employee.
 - Mr. Chan explaining all the graphic language and racist epithets he had to endure from Mr. Schmidt. He explained that Mr. Schmidt had harassed other staff as well, getting so contentious that they had to send out inspectors in pairs and reassign a female staffer.
 - Mr. Rowe also having to tell Mr. Schmidt to stop calling him, especially given his yelling, venting, and racist comments. The first time he heard the racist invective, he let it go because he thought was a mistake. The second time he tried to correct Mr. Schmidt, who used even more graphic language to explain why the slur was appropriate. At our request, he reluctantly repeated at hearing a horribly misogynistic insult Mr. Schmidt had leveled at a female Local Services’ staffer, a slur we will not reduce to writing.¹⁰
59. We noted at conference and in writing that while we were well aware of KCC 16.02.290’s “a permit shall expire by limitation and become null and void one year from the date of its issue,”¹¹ we had never encountered a single scenario in our experience as the rural ombuds (2006–2013) and examiner (2012–present) where Local Services’ even *cited* the null-and-void language, let alone denied a first extension on a building permit simply because the permit extension request came in a little late. We questioned Local Services’ February 2023 response to the ombuds that it was “bound” by KCC 16.02.290.
60. We traced the legislative history of KCC 16.02.290, with the original 1996 legislation (adopted over a quarter-century before the present dispute) reading, “Every permit approved by the building official under the code shall expire by limitation and become null and void one year from the date of its issue.” Ord. 12560 § 18, 1996. We had never, in our 17 years, heard anyone at Local Services cite that provision in denying a renewal request. Nor could we ever recall a

¹⁰ Mr. Schmidt repeated his racist slur in a voice mail to Mr. Rowe and in one to Ms. Hill. Exs. D15-16.

¹¹ The code now sets two-years as the initial period, but that was not retroactive.

scenario where someone other than staff (including the building official), made the renewal call.

61. So, we clarified that if Local Services wanted to argue that the null-and-void language was self-executing and that as a matter of course Local Services was “bound” by that, or there were other instances where Local Services denied a renewal to extend a permit based on that language, it needed to document that. Yet at hearing, Local Services failed to document even a *single* example where an applicant was actively progressing with construction and getting inspections at the close of the first year, and staff denied the permit extension simply because the renewal request came in a little late.
62. That was not game over for Local Services, because as we noted in our prehearing order, Local Services was not precluded from arguing that the specific facts of Mr. Schmidt’s case warranted non-renewal.
63. Its initial response to the draft rural ombuds report, Local Services had discussed its reasons for nonrenewal, including balancing fairness to all members of public (i.e., not just to an applicant), resource allocation and workforce integrity, and Local Services need to retain a degree of flexibility. It noted Mr. Schmidt’s interest in communicating with Local Services solely on his terms [an arrogance we saw from Mr. Schmidt in our interactions, demanding that we change our rules to accommodate, in his words, “the Peter Schmidt way of doing business”]. It discussed Mr. Schmidt’s repeated code violations, environmental harms, his flaunting of multiple stop work orders, and his flooding Local Services phone lines with his diatribes. It then pointed to Local Services’ authority to suspend or revoke permits, and concluded that “taken together with the expired status of the permit,” Local Services was “within the bounds of its discretion to require that a new permit application be submitted” Ex. A3 at 003-05 (emphasis added). All good points.
64. Local Services’ final response to the final ombuds report slimmed-down its argument to several code sections, but it still closed with the defense of its discretion that, “given the applicant’s repeated code violations, multiple stop work orders” and various codes, it was within Local Services’ authority to require a new permit application. Ex. A5. That was less persuasive than the draft response, but it still spoke of discretion and a balancing of factors.
65. With that understanding, we wrote in our prehearing order that “we expect Local Services to present a case that a departure from normal practice was appropriate here.” We entered the hearing anticipating a heavyweight fight on that question, with Local Services defending the merits of its decision, based on the special circumstances of this case. We had not prejudged the outcome, but we came prepared with questions to pepper Local Services with.
66. Yet rather than defend its decision on the merits and offer its reasoning for applying a different outcome to the Schmidts’ late-filed extension than it had previously applied (and currently applies) to everyone else, Mr. Chan insisted that Local Services did *not* engage in a discretionary decision-making. Instead, he

asserted that because Local Services did not receive a renewal request before the deadline, the permit self-expired, that the null-and-void language controlled and there was nothing for management to review.

67. It was about as surprising a twist as we can recall in our hundreds, if not thousands, of hearings. And it completely torpedoed Local Services' case. Local Services *absolutely* used discretion—the discretion to decide that for this one application, contrary to all others, a late-filed extension request (otherwise meeting the normal criteria for an extension) should not be approved.
68. Nor is this a scenario where Local Services suddenly discovered, “Oh goodness, who knew the law said that for all these decades. Gosh, we are bound to follow that in every case, starting today, and we have no discretion to depart from that standard.” Local Services has *still* not issued, for example, an all-staff bulletin along the lines of, “From today forward, if a permit expires before the extension request is received, Local Services has no authority or latitude to extend the permit.” Mr. Chan agreed that, as of our hearing date, they were processing permit rules as they always had, and had not changed their policy or practice.
69. Counsel's closing brief, discussing the Schmidts' multiple violations and deviations from plans, misogynistic and racist language, and resource strains Mr. Schmidt's outrageous conduct created, belatedly tried to raise that merits-based defense that we had been expecting but that it had abandoned at the hearing. It was too little, too late; the die was cast at hearing when Local Services elected to put all its eggs in the “the permit was null-and-void so we had no discretionary decision to make” basket.
70. That is not to say that Local Services acted arbitrarily and capriciously—again if there was ever a, “You made your bed, now you have to lie in it” scenario, Mr. Schmidt created that for himself. Local Services' draft response to the rural ombuds explained, with some force, why non-renewal was appropriate. Again, we expected the question to be a close call on. But Local Services had its story at hearing, and they were sticking to it. Thus, our decision is straightforward: Local Services should have extended the permit well before it served the Schmidts with a notice and order for working on a canceled permit. We overturn the ENFR230049 notice and order.

Forward-Looking

71. Permit-wise. Effective immediately, the Schmidts can continue with at least some of their construction activities. We say “some of,” because there are certain site plan deviations the Schmidts made that Local Services needs to (or at least needed to as of our hearing) finish reviewing. So, until Local Services completes that analysis, the Schmidts would be wise to confine their efforts to areas and activities not in dispute (such as barn construction), lest they find themselves later having to re-do work.
72. To avoid what might become a *third* permit fee waiver appeal, we offer the following. Whatever fees would normally attach to a permit extension, or to

reviewing the site plan revisions, or to other items that arise in the course of an extended permit, apply. But any fees associated with the erroneous decision to require the Schmidts to re-apply for a new permit, including those attendant to a prescreening conference, must be credited back to the Schmidts.

73. Null-and-Void. If Local Services wants to do a 180 and start rigidly enforcing KCC 16.02.290's null-and-void/self-executing language, it first has to set up a robust process where applicants are systematically advised, well in advance of the deadline, that they need to renew or their permit will be automatically canceled and they will need a new permit application, and providing specific, easy-to-follow information, for how to renew. The lack of that vigorous system to-date has not been problematic, because the building official and others have adopted a reasonable approach of renewing permits for late-filed requests, so long as the normal criteria like active construction/inspections/progress are satisfied. But if Local Services really wants to change that, it needs to *first* get its ducks completely in a row. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest impacted is a factor in determining how much process is due).
74. Code Enforcement. The rural ombuds complained that Local Services should have left it to the permit staff and not involved code enforcement, as it normally does. In our thousand-plus code enforcement cases, we would agree that in the normal scenario code enforcement takes a backseat once a permit application is filed, leaving it to permit reviewers and field inspectors. But that ignores the reality here—that there was nothing normal about Mr. Schmidt's behavior. As we noted in our April 2022 decision, we were not convinced that, short of a formal stop work order, Mr. Schmidt would have refrained from continuing construction solely on a field inspector's request. And that was *before* we heard the testimony and exhibits (including Mr. Schmidt's voicemails) presented in today's case.
75. We have Mr. Schmidt's racist and misogynistic comments, overall abusive communication, repeatedly going outside the approved plans, and violating the hours of operation.¹² But to choose just one example, in a December 2022 voicemail to Local Services' engineer, Kevin Fitts, he announced (in between swearing) that because he had not timely received Local Services' approval, he would just go ahead and undertake the work, and he even advised Mr. Fitts to get someone from code enforcement out there because, they would be proceeding without authorization. Ex. D13. It echoed what we noted in our April 2022 decision, that short of a formal stop work order, Mr. Schmidt might not have refrained from continuing construction solely on permit staff instruction. So, yes, Mr. Schmidt created a special case for himself requiring special attention, such as involving code enforcement.
76. That is a different question from how *much* of its scarce resources Local Services should be devoting to the neighbors' complaints about the Schmidts, a topic we

¹² Mr. Schmidt did not hold back from spewing his racist invective even in a call to his advocate, Ms. Hill, complaining that Local Services would not respond to him. Ex. D16. Little wonder Local Services would not respond to him.

discuss below. But that is a quantum question, not a question of whether code enforcement's involvement in general has been warranted.

77. Future Behavioral Expectations. As County employees, we have all a duty to “provide fair treatment for all employees, contractors, clients, community partners, residents and others who interact with King County.” Ord. 16279. Local Services need to protect its staff from future inappropriate conduct from Mr. Schmidt (or from anyone else). And that goes the other way as well. *Ms.* Schmidt asserted that she was talked over, interrupted, and minimized in meetings. We take that very seriously, and at hearing questioned why Local Services’ leadership seem void of women. That *Mr.* Schmidt may be the last person who can complain about anyone’s treatment of anybody else absolutely does not extend to *Ms.* Schmidt, whom everyone (including us) agrees has been completely appropriate in her communications (both in the quantum and content).
78. Even aside from outright inappropriate conduct, such as racist or misogynist slurs or creation of a hostile work environment, Local Services should not drain away resources say, reassigning staff or sending certain or extra people to the site. If Mr. Schmidt over-taxes the phone lines in a manner disproportionate from the overwhelming mass of other permit applicants, Local Services is free to limit its Schmidt-related interactions to phone calls or in-person meetings with *Ms.* Schmidt, or to emails. Baring something like a protected disability under the ADA that requires a special accommodation, Mr. Schmidt does not get to dictate that everyone else must bene to “the Peter Schmidt way of doing business.” It is inequitable to allow the squeakiest wheel to get the grease. Local Services should provide fair access to all its customers, not to just to the most aggressive.
79. And that goes the other way as well, in how Local Services takes and responds to the neighbors’ complaints *about* the Schmidts. In our April 2020 decision we described “the tidal wave of complaints *Ms.* Wallace had emailed and texted County staff.” Her attorney asserted that Local Services had actually “directed” the neighbors to provide those complaints and evidence when they felt Mr. Schmidt was in violation. Ex. A38. And Local Services’ director allegedly said that they would be “drilling down” on every neighbor complaint. If either of those statements are accurate, it is bizarre. It begs the question of why, in an era of tight resources, permitting delays, and looming County budget cuts, Local Services would want to create more work for itself, especially since so many of the complaints have turned out not to be violations at all.
80. Neither Local Services, nor our office, nor we would hope the next rural ombuds, should continue devoting a disproportionate amount of permitting, enforcement, or oversight resources to this plot of ground just because Mr. Schmidt and his neighbors keep trying to outvie other unincorporated area residents for scarce County resources and attention.
81. A more efficient solution might be the one *Ms.* Schmidt offered in a previous hearing, to engage in some sort of facilitated discussion with her neighbors to try to resolve some of the conflict. Perhaps a new or fill-in rural ombuds can restore a perception of neutrality among the neighbors and Local Services and provide

some real benefit by improving communications. Because the current system seems an inefficient use of everyone’s time.

DECISION:

1. In ENFR200651, we overturn the August 13 and September 23 stop work order violations and sustain the October 8 violation. That reduces the penalty to \$525.
2. In GRDE210123 and DWEL210267, we deny most of the challenged fees, but we grant a \$1,832 fee reduction.
3. We find that Local Services erroneously failed to renew DWEL210267, and we overturn notice and order ENFR230049 for operating without a valid permit.

ORDERED June 13, 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 MAY 19, 2023, HEARING IN THE APPEAL OF PETER AND LISA SCHMIDT, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR230049

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Matthew Becker, Jeri Breazeal, Jim Chan, Terry DePriest, Ryan Espegard, Elizabeth Hill, Jina Kim, Chris Ricketts, Mark Rowe, Lisa, Demi, and Peter Schmidt, and Kim Simpson. 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 & Order, issued February 6th, 2023 |
| Exhibit no. D3 | Appeal, received February 24, 2023, with amendments and additional |

	information submitted before the deadline of March 2nd, 2023
Exhibit no. D4	Photographs, dated January 23, 2023
Exhibit no. D5	DWEL21-0267 Permit comments
Exhibit no. D6	Approved Residential Site Plan, dated March 18, 2022
Exhibit no. D7	Engineering Review Comments for PREA23-0028
Exhibit no. D8	Hearing Examiner Report and Decision for Code Enforcement Appeal File nos. DWEL21-0627 (Stop Work Order) and ENFR22-0144, dated April 20, 2022
Exhibit no. D9	Hearing Examiner Report and Decision for Code Enforcement Appeal File no. ENFR20-0651 Waiver
Exhibit no. D10	Stop Work Order, dated August 17, 2022
Exhibit no. D11	Stop Work Order, dated November 21, 2022
Exhibit no. D12	Email, from Kevin Fitts, dated October 12, 2022
Exhibit no. D13	Three voicemails to Kevin Fitts, dated December 9 and 13, 2022
Exhibit no. D14	Lynn Schneider and Elizabeth Hill, dated December 29, 2022, and between Kevin Fitts, Lynn Schneider, and Jarone Baker, dated November 23, 2022
Exhibit no. D15	Voicemail, to Mark Rowe, dated March 29, 2022
Exhibit no. D16	Voicemail, to Elizabeth Hill, dated January 26, 2023
Exhibit no. D17	Closing statement, submitted May 24, 2023

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

Exhibit no. A1	Cover Memorandum for Ombuds Report, from Amy Calderwood (without attachments), dated February 13, 2023
Exhibit no. A2	Final Memorandum, Permitting's Decision, from by Elizabeth Hill, dated February 13, 2023
Exhibit no. A3	Local Services Response to Draft Report, from Jim Chan, email with 3 attachments, dated February 3, 2023
Exhibit no. A4	Ombuds Reply to Permitting Response, from Elizabeth Hill, dated February 13, 2023
Exhibit no. A5	Local Services Response to Ombuds Report, from John Taylor, dated February 17, 2023
Exhibit no. A6	December Building Permit and/or Permit Conditions, dated December 14, 2021
Exhibit no. A7	April Grading Permit, dated April 6, 2022
Exhibit no. A8	April Building Permit, issued April 6, 2022, but dated December 14, 2022
Exhibit no. A9	Emails between Elizabeth Hill and Eric Beach, ADAP ditch, dated October 5, 2022
Exhibit no. A10	Email, from Kevin Fitts to Schmidts, permit review, dated November 7, 2022
Exhibit no. A11	Email from Elizabeth Hill to Amy Calderwood, re ADAP ditch, dated November 16, 2022
Exhibit no. A12	Email Chain between Elizabeth Hill, Schmidts, Permitting, DNRP, and Ecology, dated November 17, 2022
Exhibit no. A13	Email, from Kevin Fitts to Schmidts, site investigation, dated November 18, 2022

Exhibit no. A14	Stop Work Order, dated November 21, 2022
Exhibit no. A15	Engineer's email submitting site plan revisions and comments (attachments omitted), dated December 7, 2022
Exhibit no. A16	Notarized Permit Renewal Request and Check, dated November 15, 2022
Exhibit no. A17	Email Chain between Elizabeth Hill and Lori McDonald, Schmidts' notarized renewal request (with attachment), dated January 17, 2023
Exhibit no. A18	Email from Doug Dobkins to Kim Simpson, permit expiration, dated December 14, 2022
Exhibit no. A19	Email from Kim Simpson to Jim Chan and Doug Dobkins, draft Notice of Expired Permit (with attachment), dated December 14, 2022
Exhibit no. A20	Email, from Kim Simpson to Kim Laymen, Notice of Expired Permit to be mailed (without attachment – see next exhibit), dated December 15, 2022, 8:30 a.m.
Exhibit no. A21	Notice of Expired Permit, dated December 15, 2022
Exhibit no. A22	Permitting Response to Discovery Requests –Submitted, request #2 – “standard form”, dated April 20, 2023
Exhibit no. A23	Public Records Request Response – with the singular record produced attached, dated March 21, 2023
Exhibit no. A24	Public Records Request Response – confirming no other Notice of Expired Permit exists, dated April 10, 2023
Exhibit no. A25	Email Chain between Permitting Staff, Permit Renewal, dated December 22, 2022, 7:22: a.m. – 11:50 a.m.
Exhibit no. A26	Email from Kim Simpson to Jim Chan and Doug Dobkins, dated December 22, 2022, 11:57 a.m.
Exhibit no. A27	Email, from Jim Chan to Doug Dobkins, dated December 22, 2022, 12:23 p.m.
Exhibit no. A28	Email, from Jim Chan to Kim Simpson, dated December 22, 2022, 12:30 p.m.
Exhibit no. A29	Email, from Kim Simpson to Peter Schmidt permit expiration, dated December 22, 2022, 3:59:56 p.m.
Exhibit no. A30	Email, from Lisa Schmidt to Elizabeth Hill, permit expiration, dated December 22, 2022, 8:36 p.m.
Exhibit no. A31	Email, from Matt Becker to Lisa Schmidt, additional work allowed, dated December 27, 2022, 3:07 p.m.
Exhibit no. A32	Email, from Jim Chan to Peter Schmidt, permit expiration, dated January 6, 2023
Exhibit no. A33	Email from Jim Chan to Mark Rowe with draft response, dated January 10, 2023, 10:13:15 a.m.
Exhibit no. A34	Email, from Mark Rowe to Lisa Schmidt, permit expiration, dated January 10, 2023, 5:31:03 p.m.
Exhibit no. A35	Notice of Code Violation, dated February 6, 2023
Exhibit no. A36	Email, from Jim Chan to Elizabeth Hill, refusing to allow Ombuds Office to participate in meeting, dated February 16, 2023
Exhibit no. A37	Email, from Besty MacWhinney, King County permit review times and trends, submitted May 15, 2023

Exhibit no. A38 Closing statement, submitted May 24, 2023 (*first five pages admitted*)

**MINUTES OF THE MAY 16, 2023, 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, Ryan Mensonides, Lisa and Peter Schmidt, and Sue Wallace. 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 | Local Services staff report to the Hearing Examiner |
| Exhibit no. D2 | Stopwork Order, issued January 20, 2022 |
| Exhibit no. D3 | Timeline of Billing Activity |
| Exhibit no. D4 | Email, waiver request, from Sheryl Lux, dated September 26, 2022 |
| Exhibit no. D5 | Letter, waiver denial, dated December 8, 2022 |
| Exhibit no. D6 | Appeal, received December 20, 2022 |
| Exhibit no. D7 | Applicable Codes |
| Exhibit no. D8 | Photographs and Videos |
| | A. August 13, 2022, email from Sue Wallace (video 5618) |
| | B. August 13th, 2022, email from Mary Ann DeMoss (video 4168) |
| | C. September 23, 2022, Snip with time stamp (DeMoss video 4576) |
| | D. September 23, 2022, Snip with time stamp (Wallace video 6495) |
| | E. October 8, 2022, email with 7 05 13 video from Mary Ann DeMoss [heavy equipment unloading something in construction area...] |
| | F. October 8, 2022, email with 7 05 35 video from Mary Ann DeMoss [heavy equipment moving across construction area] |
| | G. October 8, 2022, Sue Wallace video 6600 (truck driving in) |
| | H. October 8, 2022, Sue Wallace video 6809 (pick at right side) |
| | I. October 8, 2022, Sue Wallace video 6810 (truck dumping in what appears to be construction area then moving back out) |
| Exhibit no. D9 | Screenshot, iMap of subject property, submitted May 16, 2023 |

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

- | | |
|----------------|--|
| Exhibit no. A1 | Email, waiver request, from Sheryl Lux, dated November 17, 2022 |
| Exhibit no. A2 | Email, October 8, 2022, violation, from Sheryl Lux, dated October 28, 2022 |

- Exhibit no. A3 Email, work after hours chart, from Sheryl Lux, dated October 27, 2022
- Exhibit no. A4 Email, amended waiver request, from Sheryl Lux, dated September 26, 2022
- Exhibit no. A5 Email, waiver request, from Sheryl Lux, dated September 26, 2022
- Exhibit no. A6 Email, hay bales, from Schmidt, dated September 26, 2022
- Exhibit no. A7 Email, hay bales, from Sheryl Lux, dated September 26, 2022
- Exhibit no. A8 Email, hay bales, from Schmidt, dated September 26, 2022
- Exhibit no. A9 Email, appeal process, from Sheryl Lux, dated October 6, 2022
- Exhibit no. A10 Email, automatic reply on appeal, from Sheryl Lux, dated October 7, 2022
- Exhibit no. A11 ENFR210651 Waiver, hearing examiner notice excerpt, page 2
- Exhibit no. A12 Email, response to voicemails, from Sheryl Lux, dated September 16, 2022
- Exhibit no. A13 Email, response to voicemails continued, from Sheryl Lux, dated September 16, 2022
- Exhibit no. A14 Code Enforcement Authorization for Waiver or Adjustment of Stop Work Order Violation Penalties, continued, dated December 5, 2022
- Exhibit no. A15 Exhibits List
- Exhibit no. A16 Photograph of truck
- Exhibit no. A17 Photograph of field
- Exhibit no. A18 Photograph of hose
- Exhibit no. A19 Graph of temperature in October 2022
- Exhibit no. A20 Email, stop work order, from Matt Becker, dated August 23, 2022
- Exhibit no. A21 Email, complaint, from Mark Rowe, dated June 28, 2022
- Exhibit no. A22 Email, reason for complaint continued, from Schmidt, dated June 28, 2022
- Exhibit no. A23 Email, water quality complaint, from Doug Navetski, dated July 19, 2022
- Exhibit no. A24 Email, from Elizabeth Hill, dated July 19, 2022
- Exhibit no. A25 Photograph of field
- Exhibit no. A26 Statement, from Ryan Mensonides, dated February 28, 2023
- Exhibit no. A27 Statement, from Mark Sanders, dated February 27, 2023
- Exhibit no. A28 Exhibits List
- Exhibit no. A29 Email, agricultural activity, from Eric Beach, dated July 28, 2022
- Exhibit no. A30 Letter, Civil Penalty Waiver Request, dated December 8, 2022
- Exhibit no. A31 Email, noise complaint, from Mark Rowe, dated September 23, 2022
- Exhibit no. A32 Email, working hours, dated September 21, 2022
- Exhibit no. A33 Exhibits List
- Exhibit no. A34 Email, working hours, from Sheryl Lux, dated September 19, 2022
- Exhibit no. A35 Email, from Mary DeMoss, dated September 19, 2022
- Exhibit no. A36 Email, photo, dated March 5, 2022
- Exhibit no. A37 Email, dated November 24, 2022
- Exhibit no. A38 Email, from Brett Vinson, dated August 8, 2022
- Exhibit no. A39 Emails, dated September 23, 2022
- Exhibit no. A40 Email, from Mary Ann DeMoss, dated September 23, 2022

Exhibit no. A41 Rebuttal exhibit list

MINUTES OF THE MAY 16, 2023, HEARING IN THE APPEAL OF PETER AND LISA SCHMIDT, DEPARTMENT OF LOCAL SERVICES FILE NOS. DWEL210267 AND GRD210123 WAIVER

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Warren Cheney, Jina Kim, and Peter and Lisa 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 and PREA20-0203 waiver request and Local Services’ denial letter
Exhibit no. D2	GRDE21-0123 waiver request and Local Services’ denial letter
Exhibit no. D3	DWEL21-0267 waiver request and Local Services’ denial letter
Exhibit no. D4	Appeal
Exhibit no. D5	Appellant authorization to submit appeal statement, received October 28, 2022
Exhibit no. D6	Local Services’ Motion to Dismiss appeal of PREA20-0203 waiver denial letter
Exhibit no. D7	Email, from Ramon Locsin, sent January 29, 2022
Exhibit no. D8	King County Code, Title 27

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

Exhibit no. A1	Permit application, dated October 28, 2021
Exhibit no. A2	Cover page, Technical Information Report, Eastside Consultants Inc, dated March 10, 2021
Exhibit no. A3	Table of Contents, Technical Information Report
Exhibit no. A4	Project Overview, Technical Information Report
Exhibit no. A5	Project Overview continued, Technical Information Report
<i>Exhibit no. A6</i>	<i>No document submitted</i>
Exhibit no. A7	Map with notes
Exhibit no. A8	Notification of Permit Approval, dated April 5, 2022
Exhibit no. A9	Email, from Doug Dobkins, sent March 25, 2022
Exhibit no. A10	Receipt for DWEL210267, paid March 30, 2022
Exhibit no. A11	Summary of charges for GRDE210123, dated August 2, 2022
Exhibit no. A12	Summary of charges for GRDE210123, dated September 27, 2021
Exhibit no. A13	Summary of charges for DWEL210267, dated March 28, 2022
Exhibit no. A14	Letter, Revised Financial Guarantee Requirements, dated March 31, 2022
Exhibit no. A15	Check, dated March 31, 2022
Exhibit no. A16	Letter, Cash Deposit to King County, Critical Area Restoration
Exhibit no. A17	Letter, fee waiver denial of PREA200203, dated March 25, 2022
Exhibit no. A18	Letter, fee waiver denial of GRDE210123, dated August 26, 2022

Exhibit no. A19 Letter continued, fee waiver denial of GRDE210123, dated August 26, 2022

Exhibit no. A20 Letter, Fee Waiver/Adjustment of Fees Authorization for GRDE210123, dated August 19, 2022

Exhibit no. A21 Letter, fee waiver denial of DWEL210267, dated August 26, 2022

Exhibit no. A22 Exhibits List

Exhibit no. A23 Photograph of driveway, dated October 29, 2021

Exhibit no. A24 Site Areas Worksheet, for DWEL210267

Exhibit no. A25 Site Areas Worksheet, for DWEL210267

Exhibit no. A26 Flow Control BMPs

Exhibit no. A27 Flow Control BMPs

Exhibit no. A28 Residential Drainage Review Checklist, DWEL210267

Exhibit no. A29 Residential Drainage Review Checklist, DWEL210267

Exhibit no. A30 Text, dated December 14

Exhibit no. A31 Text, dated December 16

Exhibit no. A32 Text, dated December 16

Exhibit no. A33 Text, dated December 15

Exhibit no. A34 Text, dated January 20

Exhibit no. A35 Text, dated December 18

Exhibit no. A36 Text, dated December 15

Exhibit no. A37 Text, dated December 11

Exhibit no. A38 Text

Exhibit no. A39 Text, dated November 21

Exhibit no. A40 Text

Exhibit no. A41 Text, dated December 3

Exhibit no. A42 Text, dated November 21

Exhibit no. A43 Text, dated January 29

Exhibit no. A44 Rebuttal Exhibits List

Exhibit no. A45 Letter, Clearing and Grading for GRDE210123

Exhibit no. A46 Email, from Warren Cheney, dated April 18, 2023

Exhibit no. A47 Letter, Clearing and Grading for GRDE210123, dated April 6, 2023

Exhibit no. A48 Email, from Joseph Pursley, dated April 18, 2023

Exhibit no. A49 Witness List

Exhibit no. A50 Exhibits List

Exhibit no. A51 Letter, Notice of Expired Permit, dated December 15, 2022

June 13, 2023

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file nos. **ENFR230049, GRDE210123 and DWEL210267, and ENFR200651**

PETER AND LISA SCHMIDT

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 June 13, 2023.



Jessica Oscoy
Office Manager

Becker, Matthew

Department of Local Services

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

Chan, Jim

Department of Local Services

DePriest, Terry

Department of Local Services

Espgaard, Ryan

Gordon Thomas Honeywell

Hardcopy

Hepburn, Michael

Prosecuting Attorney's Office

Hooper, Leslee

Gordon Thomas Honeywell

Hossienzadeh, Ben

Department of Local Services

Kim, Jina

Prosecuting Attorney's Office

Ricketts, Chris

Department of Local Services

Rowe, Mark

Department of Local Services

Schmidt, Demi

Schmidt, Lisa and Peter

Hardcopy

Simpson, Kim

Department of Local Services

Stier, Jon

Ombudsman's Office

Travis, Liah

Prosecuting Attorney's Office

Vinson, Brett

Reynolds Burton & Vinson

Hardcopy

Whalen, LaDonna

Department of Local Services

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

DeMoss, Mary Ann

Espgaard, Ryan

Gordon Thomas Honeywell
Hardcopy

Hepburn, Michael

Prosecuting Attorney's Office

Hooper, Leslee

Gordon Thomas Honeywell

Kim, Jina

Prosecuting Attorney's Office

Lux, Sheryl

Department of Local Services

Mensonides, Ryan

Schmidt, Lisa and Peter

Hardcopy

Stier, Jon

Ombudsman's Office

Travis, Liah

Prosecuting Attorney's Office

Vinson, Brett

Reynolds Burton & Vinson

Vinson, Brett

Reynolds Burton & Vinson
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