November 7, 2024

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
Telephone (206) 477-0860
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR210850 (Penalty)**

RON SHEAR
Code Enforcement Appeal

Location: [redacted]

Appellant: Ronald Shear
represented by **Justin Park**
Romero Parks P.S.
1019 W. James Street, Suite 102
Kent, WA 98032
Telephone: (425) 450-5000
Email: jpark@romeropark.com

King County: Department of Local Services
represented by **Cortlee Harris**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 848-0300
Email: coharris@kingcounty.gov

RECOMMENDATIONS/DECISION:

Department's Recommendation: Uphold $12,150 fine and lien.

Examiner's Decision: Fine stricken; lien withdrawal ordered.

FINDINGS:

1. The King County Department of Local Services imposed $12,150 in civil penalties against Ronald Shear "for failure to submit a complete permit application or follow up communication to the Code Enforcement Officer by March 8, 2024."[1] Mr. Shear was not provided a citation or notice of civil penalty before penalty imposition. He discovered the penalty a month after its imposition through a notice of lien, which the Department had filed against the property involved. He responded by filing a Civil Penalty Waiver Request, which the Department denied. Mr. Shear appealed to the Hearing Examiner.

2. The Examiner conducted a hearing on October 25, 2024. Justin Park appeared for Mr. Shear, and Cortlee Harris appeared for the Department. The parties' exhibits were admitted without objection.[2] Mr. Harris testified for the Department. Mr. Shear and Hans Korve testified for the Appellant.

3. In a previous hearing, the Examiner had addressed Mr. Shear's appeal of a Citation:

> The Citation is upheld, with clarification, and remanded for permitting and removal of unauthorized uses consistent with the Report and Decision. By July 26, 2023,[3] Mr. Shear shall submit a complete pre-application meeting request addressing this site and follow through on required permitting and compliance.
>
> No penalties shall be assessed against Ronald Shear if the above actions are completed by the deadline, or by any reasonable deadline extension the Department provides, and action taken consistent with the Report and Decision.[4]

4. The Decision did not require *all* the Applicant's activity on the property to be permitted. The Decision distinguished between agricultural and non-agricultural uses, noting the permitting exemptions for agricultural activities, which the Decision found were occurring on the site.[5] After the Decision, the Water and Land Resources Division (a *different* King County agency from the Department) approved a Farm Conservation Plan which identifies the location of the site's agricultural activities and the time frames in which they commenced.[6]

5. The Department's Staff Report provides the following timeline:

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[1] Ex. D-1 (Staff Report), p. 1, *see also* p. 2.

[2] *See* attached Exhibit List.

[3] The original decision had a May 19, 2023, compliance date, but this was extended to July 26, 2023, on reconsideration. Ex. D-4 (Order on Motion for Reconsideration), p. 2.

[4] Ex. D-3 (Examiner's Decision), p. 6.

[5] Ex. D-3 (Examiner's Decision).

[6] Ex. A-2 (Farm Plan Approval), p. 2; Ex. A-3 (Farm Plan Registration), which states: "when properly implemented, the plan complies with the following King County Codes: K.C.C. 21A.20 (Critical Areas); K.C.C. 21A.30 (Livestock Management); K.C.C. 1682 (Clearing and Grading); K.C.C. 9.04 (Surface Water Management)."

- July 27, 2023: Mr. Shear submitted a pre-application with a fee. Subsequently, the Department indicated full payment was not received and the Applicant provided full payment.

- August 18, 2023: Staff advised the Applicant that the application was incomplete, and that additional documents were due in 14 days.

- August 28, 2023: The Department received the additional documents.

- December 7, 2023: The Department met with Mr. Shear.

- January 8, 2024: The Department e-mailed Mr. Shear information on required permits. The email advised Mr. Shear to submit a permit application within 180 days and to contact Code Enforcement Officer Jeri Breazeal within 60 days (i.e., by March 8, 2024). The e-mail is not in the record, but an excerpt was provided with the exhibits and read into the record at the hearing:

> If you successfully submit for the building permit within 180 days from the date of this email, you will receive a credit transfer for the preapplication meeting you've already paid, $874.00. Code Enforcement Officer Jeri Breazeal will also be expecting following up communication on the application progress within 60 days from the date of this e-mail.[7]

6. So, 180 days from the January 8 e-mail is July 6. Yet the Department imposed the penalty on April 9, three months *before* the permit application deadline had run, and without any advance notice to the Applicant. The Department did not issue a citation or a notice and order or even a bill. Instead, the Applicant received notice of the fine via a claim of lien recorded against the real estate, a month after its imposition.[8]

7. The Staff Report states that Mr. Shear did not follow up with Ms. Breazeal within 60-days of the January e-mail (by March 8, 2024). In a declaration submitted as part of this appeal, Ms. Breazeal stated she had not received communication from the Applicant, but had "retired on February 29, 2024,"[9] before the March deadline had run. The Department, in its hearing testimony, stated it did not know if Ms. Breazeal's e-mail box had been monitored or if the Applicant had been informed of Ms. Breazeal's retirement.[10] The Department testified that it was not aware of any code section authorizing a fine based on a Department request for a check-in e-mail.[11]

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[7] Ex. D-5, p. 1; Testimony, Mr. Harris.
[8] Testimony, Mr. Harris; Testimony, Mr. Shear. The Staff Report identifies a Violation 1 and 2. There is no explanation as to why there are two violations or the basis for the add-ons for environmental damage, property damage, and economic benefit. Ex. D1 (Staff Report), p. 2; Ex. D-6 (Waiver Denial), p. 1.
[9] Ex. D-8, p. 2.
[10] Testimony, Mr. Harris.
[11] Testimony, Mr. Harris.

8. Mr. Korve testified for the Applicant. Mr. Korve has a bachelor's degree in City and Regional Planning from California Polytechnic State University and a master's degree in Urban Planning from the University of Washington. He has been a Planning Manager at DMP Engineering for 22 years. He oversees entitlements, project management, client interaction, and consultant coordination. This includes work to secure permits. He has been through King County permitting processes several hundred times. The Applicant retained Mr. Korve to assist with permitting.[12]

9. Mr. Korve contacted the Department on April 5, 2024. He only had communication information for a Meagan Nelson, so he wrote Ms. Nelson to let her know about the project, that he had been retained to address it, needed to set up a time to address his questions, and let her know his availability. Ms. Nelson, apparently unaware that Ms. Breazeal had retired, got back to Mr. Korve on April 8, but told him to get in touch with Ms. Breazeal. Not knowing she had retired, Mr. Korve followed those instructions and later that same day (April 8) e-mailed Ms. Breazeal. He never received a response to that e-mail.

10. Mr. Korve tried to e-mail Ms. Breazeal again. He then received a response from Thomas Campbell, her supervisor. Mr. Campbell stated that Ms. Breazeal had retired, and he would get back to Mr. Korve with the newly assigned person later that day. He did not.

11. Mr. Korve reached out to Mr. Campbell on April 20, again reiterating that he needed to speak with someone. Mr. Campbell did not get back to Mr. Korve until June, stating only that there would be changes in staffing and he would get back with the new staff contact. No staff contact was provided.

12. In July, Mr. Korve followed up again, stating it had been six weeks since the Department's last contact on staffing and requesting a Department contact. There was still no response.

13. In August, Mr. Korve again reached out once more to Mr. Campbell, saying it had been another two weeks since he had attempted to reach the Department. Mr. Korve wrote "we're eager to work with King County but we have no contact information for the Code Enforcement Officer."

14. Mr. Campbell finally contacted Mr. Korve on September 6, 2024, responding with the name of Code Enforcement Officer Harris. He stated Mr. Harris would handle the hearing (as at this point an appeal had been filed); there was never a response on questions regarding the fines. This was the first time Mr. Campbell got back to the Applicant after the Applicant's attempts at contact throughout the spring and summer. Mr. Campbell did not provide contact information for Mr. Harris, so Mr. Korve had to reach out to obtain that, which he received a couple days later.

[12] Testimony, Mr. Korve, *see also* Appellant's Witness List. Findings 8-16 are based on Mr. Korve's testimony.

15. After five months of the Applicant continually reaching out to the Department to speak with a Code Enforcement Officer assigned to the case, Mr. Korve was finally able to converse with Mr. Harris on September 16. However, while Mr. Harris was professional, he did not have the requisite case background and knowledge on the code sections to assist with Mr. Korve's code questions.

16. The Applicant informed the Department that the property is subject to an approved Farm Conservation Plan, making activities on the site approved and allowed under the King County Code. The Plan demarcates fully disturbed and historically farmed areas pre-dating the Applicant's agricultural activities on the site. The code contains permitting exemptions for agricultural activities, which the Conservation Plan details. The Plan shows the agricultural work the Applicant has done and compares it to areas disturbed in 1964 and before the Applicant started work in 2015. The evidence demonstrates that the Applicant was working on the permitting questions, which included demarcating areas exempt from permitting.

17. Mr. Shear also testified. He stated he participated in the December 2023 telephone pre-application meeting with Ms. Breazeal and others. A month later (January 8, 2024) he received an e-mail from the Department. The e-mail focused on the 180-day clock for permit application, with nothing on penalties. He stated that the Department never told him that Ms. Breazeal would be retiring, and he never received notice that she would no longer be the assigned code enforcement officer.

18. Mr. Shear described the process for Farm Conservation Plan development and approval. He spoke with a representative from the King Conservation District.[13] He provided details, including site size, where grass is cut and where hay is made. The District met on site with him, and Mr. Shear elected to have the Plan approved and adopted by King County. The Plan is dated October 2023, and was approved by the King County Water and Land Resources Division on July 19, 2024.[14] Mr. Shear's position is that the Conservation Plan demonstrates the extent of agricultural activities, which are exempt from some of the permitting.

19. Mr. Shear's and Mr. Corve's testimony was credible and consistent with the evidentiary record. The Department did not dispute the facts the Applicant presented or provide exhibits contrary to the testimony the Applicant presented.

CONCLUSIONS:

20. "The burden is on the appellant to demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance or that the penalties are otherwise erroneous or excessive under the circumstances."[15]

21. A lien may be filed against a property in certain circumstances.

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[13] The King Conservation District is not a County agency, but assists with farm plans County agencies rely on.

[14] Appellant Exs. A-1, A-2, and A-3. The Plan was registered that same day. Ex. A-3.

[15] KCC 23.32.110.

> Within ninety days from the date any civil penalty, civil fine, abatement cost, or enforcement cost is due … a director may record a lien against the property of a person responsible for code compliance for the amount owing with the records and licensing division….[16]

22. The Department did not follow these provisions. No penalty, fine, abatement cost, or enforcement cost was identified before the lien was imposed. There were no outreach attempts by the Department. Lien imposition was inconsistent with KCC 23.40.010.

23. The Department assessed Mr. Shear penalties of $12,500 for 60 days. The 60-days was based on the alleged failure to reach out to Ms. Breazeal. However, the Applicant was never informed of her retirement, her e-mail box was not checked following her retirement, and the Applicant had in fact reached out to her. The Applicant continually attempted to reach the Department during April, May, June, July, and August. It took the Department over five months (until September) to respond to the Applicant and apprise them of who had been assigned to its case.

24. The Department imposed the fine on April 9, 2024, but did not inform the Applicant until receipt of a notice of lien dated May 16. These dates are both before the July permitting deadline. Even if the Department had followed the correct steps for lien imposition, there was no violated deadline, so no penalty could have been imposed. Counsel submitted correspondence to the Department on May 20, emphasizing that even as of the date of his correspondence, "only 133 days have passed since the January 8, 2024, e-mail," and the 180-days would not run for an additional month and a half.[17]

25. Even the basis for the 60-day calculation is unclear, as the Applicant was provided 60 days to reach out to Ms. Breazeal. So under the Department's theory, non-compliance could only begin on Day 61, or on March 9. The fine was imposed on April 9, 31-days later, not 60-days later. Regardless, it was imposed before the July permitting deadline had run, so could not have been based on a failure to meet that deadline.

26. There is no basis for imposing a fine based on a failure to "reach out," particularly where the Department was non-responsive for five months, did not consult with the Applicant, and provided no contact information on the assigned staff until well after fine imposition.

27. The Department rushed to impose maximum penalties yet did not rush to assist the Applicant with compliance. The Department did not hold a conference until two months after the application materials were received and then waited a month before sending the Applicant an e-mail on reaching out within 60 days and submitting a permit within 180-days. It is inexplicable how $12,150 could be imposed for not reaching out within a 60-day period, and asserting various harms to the environment and property, when the Department itself did nothing on the case for five months and made no effort to expedite its efforts before then.

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[16] KCC 23.40.010.A.

[17] Ex. D-5, p. 1.

28. The penalties were imposed prematurely and in error. The goal of code compliance is not penalty imposition, but compliance. Fines are used "for remedial purposes as needed to ensure and effect code compliance."[18] That typically will require outreach and staff availability to a permit applicant so permit requirements can be confirmed and understood, the permitting agency can understand the individual circumstances (especially where there has been a change in staff assigned to the matter), and appropriate discussions can occur before escalation through an appeal.

29. The Applicant has worked diligently towards code compliance, even developing a long-term solution with the approved Farm Plan. The Applicant attended the pre-application meeting, retained a permit consultant, researched historic and current conditions on site, his consultant attempted to communicate with County personnel, and he went through the process to obtain approval of a Farm Conservation Plan and registered it.

30. The Applicant is accused of not sending an e-mail to a staff member by March 8, 2024, although she was no longer with the County by then, the Department was not monitoring her e-mail, and it was only after the Applicant continually contacted the Department for five months that the Department finally notified the Applicant who they should be working with.

31. The penalties imposed were erroneous. The Applicant has demonstrated the fines are unrelated to compliance objectives, have no legal or factual basis, and must be waived in full. Without a valid legal penalty, and absent compliance with required procedures, the lien was erroneously imposed.

32. The Department has a process for issuing penalties, a process which includes a window for the Applicant to ask the Department to waive those penalties, with an appeal to the Hearing Examiner if the Department denies the waiver.[19] The Department failed to follow its own process, and instead went straight to a lien.

33. This failure was compounded by procedural problems. Despite being advised of the snafu involving Ms. Breazeal's retirement and unmonitored email box, the inconsistency of the Department providing a July 6 permit application date yet issuing a penalty on April 9, and the failure to follow the process for issuing a civil penalty and allowing a waiver request *before* a lien is filed, the Department did not rectify the problem on its own, but remained adamant that the penalties should remain. This was not a case that should have proceeded to hearing.

[18] KCC 23.01.020.
[19] KCC 23.32.050, .100.

DECISION:

1. The $12,150 in penalties are waived in full.

2. The Department shall immediately release the lien placed on the real estate.

3. The permitting process shall consider the identification work Mr. Korve has completed and the approved Farm Conservation Plan, which identifies the location of the Applicant's agricultural activities on the site and the dates of earlier agricultural activities.

4. The Department shall establish any new permitting deadlines which may be required, but only after consulting with the Applicant on a reasonable and appropriate time frame. If the Applicant requests, the Department should make itself available in person for that consultation and later discussions. The Department shall provide the Applicant with current contact information of individual(s) who can address substantive and procedural questions and provide timely responses to the Applicant throughout any remaining permitting.

5. In future, the Department shall follow its code required processes if penalty imposition should be deemed necessary to achieve compliance.

ORDERED November 7, 2024.

Susan Drummond
King County Hearing Examiner *pro tem*

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 OCTOBER 25, 2024, HEARING IN THE APPEAL OF RON SHEAR, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR210850 (PENALTY)

Susan Drummond was the Hearing Examiner pro tem in this matter. Participating in the hearing were Cortlee Harris, Justin Park, Hans Korve, and Ron Shear. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

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

Exhibit no. D1	Department of Local Services staff report
Exhibit no. D2	Notice and order, issued August 18, 2022
Exhibit no. D3	Hearing Examiner Decision
Exhibit no. D4	Heairng Examiner Order on Motion for Reconsideration
Exhibit no. D5	Civil Penalty Waiver Request
Exhibit no. D6	Civil Penalty Waiver Denial Appeal
Exhibit no. D7	Civil Penalty Waiver Denial
Exhibit no. D8	Declaration of Jeri Breazeal

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

Exhibit no. A1	October 2023 King County Conservation District Farm Conservation Plan
Exhibit no. A2	7.19.2024 Letter re: registration and filing of the Farm Conservation Plan with King Co. Water and Land Resources Division
Exhibit no. A3	7.19.2024 Shear Conservation Plan Registration
Exhibit no. A4	1964 Site Footprint
Exhibit no. A5	2015 Site Footprint
Exhibit no. A6	2024 Site Footprint
Exhibit no. A7	1964+2015+2024 Combined Site Footprint
Exhibit no. A8	Site photos showing BRC inside 2015 footprint
Exhibit no. A9	1964+2013+2015+2024 Site Footprints
Exhibit no. A10	Spot Elevations Survey 10/2024

November 7, 2024

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR210850 (Penalty)**

RON SHEAR
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, Quadient-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 November 7, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Campbell, Thomas
Department of Local Services

Harris, Cortlee
Department of Local Services

Korve, Hans
Hardcopy

Park, Justin
Romero Parks P.S.
Hardcopy

Shear, Ronald
Hardcopy

Whalen, LaDonna
Department of Local Services