August 12, 2024

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR220402 (Waiver)**

PATRICK ROTH
Code Enforcement Appeal

Location: 23628 266th Avenue SE, Maple Valley

Appellant: Patrick Roth
represented by **Stephen Plowman**
8048 NE 8th Street
Medina, WA 98039
Telephone: (253) 233-0321
Email: sjplowmanlaw@gmail.com; sjplowman@gmail.com

King County: Department of Local Services
represented by **Holly Sawin**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 477-0291
Email: holly.sawin@kingcounty.gov

FINDINGS:

Introduction

1. After hearing the witnesses' testimony and observing their demeanor at our August 1, 2024, hearing, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal.

Background

2. The Department of Local Services, Permitting Division (Department or Permitting) issued a stop work order and notice and order in ENFR220404 (Notice and Order) alleging two violations on Patrick Roth's property: clearing/grading and construction of structures without permits. The Notice and Order specified the civil penalties Mr. Roth would incur if he did not correct the violations by specified dates. Mr. Roth (Appellant) appealed the Notice and Order. On August 8, 2023, the Hearing Examiner issued a decision granting in part and denying in part his appeal (Decision on Appeal of Notice and Order). The decision required the Appellant to submit a *pre-screening meeting request* by September 27, 2023, with subsequent compliance dates. Exs. D1 – D6.

3. Permitting mailed the *pre-screen application documents* to Appellant on June 14, 2022, together with a letter outlining the alleged code violations and related King County Code (KCC) provisions. Appellant contends that he did not receive this letter. Permitting also posted the pre-screen application documents and Notice and Order on an outbuilding on the Roth property on March 15, 2023. Exs. D3, page 3, D12; testimony of Ofc. Sawin and Patrick Roth.

4. Appellant submitted a *pre-application meeting application* by email to the DPER Permit Center with a copy to Ofc. Sawin at 3:54 PM on September 7, 2023. At 7:32 AM on the following day, September 8, Ofc. Sawin responded to this email, advising that an Already-Built Construction (ABC) Pre-screening meeting application needed to be made on MyBuildingPermit.com (MBP). Ofc. Sawin attached the ABC Pre-screening meeting application form with the section required to be completed by Code Enforcement (Project description) completed. Ofc. Sawin revised the Project description in this form from the form she provided in June 2022, to reflect the Hearing Examiner's Decision on Appeal of Notice and Order. Exs. D1, D7, pages 10-12, 17, D9, pages 20-25; testimony of Ofc. Sawin.

5. To date, Appellant has not submitted a pre-screen application through MBP or by mail. Ex. D1; testimony of Ofc. Sawin and Patrick Roth.

Assessment of civil penalties

6. Permitting subsequently issued civil penalties in the amount of $13,950 for non-compliance with the September 7, 2023, pre-screening meeting request deadline. It did not do so until November 9, 2023. Ex. D7, page 3.

7. The penalties assessed are those specified in the Notice and Order ($90 for the first 30 days and $180 for the second 30 days for violation 1 and $65 for the first 30 days and $130 for the second 30 days for violation 2). Exs. D1, D4, page 2.

8. Appellant submitted a fee waiver request on November 30, 2023, which Permitting denied on February 8, 2024. Exs. D1, D7, D8.

9. Appellant appealed that decision to the examiner on February 26, 2024. Ex. D8. We set a May 2 hearing.

Stay of appeal

10. Appellant asserted that on August 29, 2023, his attorney, Stephen Plowman, timely filed an appeal in Superior Court of the Decision on Appeal of Notice and Order and paid the requisite filing fee. Appellant requested a continuance in our matter until the court ruled on his motions for a stay and on jurisdictional and preliminary matters. Accordingly, we stayed our matter until the court weighed in. April 5, 2024, Order of Stay.

11. On April 17, King County Code Enforcement requested that we lift the stay, providing evidence indicating that the Superior Court returned or dismissed the appeal due to several flaws and that, as of April 16, 2024, the Superior Court no motions pending before it on the Roth matter. That same day, we sent Mr. Plowman an email advising that it appeared that the court's process was at an end and asking whether he planned any further judicial step on behalf of his client. We asked for response by April 25. Ex. A5.

12. We received no response from Mr. Plowman.[1] Accordingly, we dissolved the stay and went to hearing on August 1. Exs. A5, D10.

Civil Penalties Calculation

13. Following the assessment schedule set forth in KCC 23.32.010.A.1.c(3), Permitting assessed $8,100 in civil penalties for Violation 1, calculated as follows: $25 basic + $15 environmental damage risk + $25 economic benefit to responsible party + $25 previous similar violation, totaling $90/day for the first 30 days and $180/day for the second 30 days. Ex. D8. Permitting assessed $5,850 in civil penalties for Violation 2, calculated as follows: $25 basic + $15 environmental damage risk + $25 economic benefit to responsible party, totaling $65/day for the first 30 days and $130/day for the second 30 days. Ex. D8.

14. Although KCC 23.32.010.B authorizes penalties to be assessed daily until the person responsible for code compliance has fully complied with the notice and order, Permitting does not assess penalties beyond 60 days. Testimony of LaDonna Whalen.

Appeal

15. The appeal incorporated the waiver request by reference. Together, the appeal and the waiver request allege that as to:

    A. Violation 1 (clearing exceeding 7000 ft.^{2}; new impervious surfaces exceeding 2000 ft.^{2}; and fill exceeding 500 yd.^{3}):
        i. The Examiner concluded (in the August 2023 Decision on Appeal of Notice and Order Findings) that Permitting had not proven the alleged fill or that the deck constituted an impervious surface.

[1] As noted in footnote 1 to the April 26, 2024, Order Dissolving Stay, Mr. Roth sent an email a 4:02 on April 25 stating that Mr. Plowman "is unavailable to respond by today's deadline," but offering no reason. He also contended that there are continuing judicial steps underway, without specifying what those steps were. *See also* Ex. A6.

ii. The Examiner's August 2023 findings 27-29, 31, 41, and 44 (prior clearing for the residence and driveway; additional clearing occurring between May 2011 and May 2023; Permitting's estimates of the areas of new impervious surfaces; and clear rock constitutes an impervious surface, respectively) in the Decision on Appeal of Notice and Order Findings are "false" or lack evidentiary support.

iii. Permitting did not advise him that the application submitted to the Permit Center was submitted in error.

iv. Appellant has appealed the Examiner's August 2023 Decision on Appeal of Notice and Order to Superior Court.

B. Violation 2:

i. There is no harm to the public or to critical areas on/near his property.

ii. Permitting gave no basis for the dollar amount of the fine.

iii. Appellant received no benefit from the violation. Exs. D7, D9.

16. The burden is on the Appellant to demonstrate by preponderance of the evidence that civil penalties were assessed after achieving compliance, are otherwise erroneous, or are excessive under the circumstances. KCC 23.32.110. In an appeal of the assessment of civil penalties an 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.

Violation 1 Civil Penalties:

17. Taking Appellant's contentions in the order listed in Finding 15, the Examiner did conclude that Permitting had not proven the alleged fill or that the deck constituted an impervious surface. However, Permitting did not assess civil penalties for the alleged fill or deck. Testimony of Ofc. Sawin.

18. KCC 23.32.120.A prohibits Appellant from challenging the Examiner's findings in the August 8, 2023, Decision on Appeal of Notice and Order Findings in a later appeal of the denial of a civil penalty waiver.

19. While the communication perhaps could have been clearer, Ofc. Sawin advised Appellant of the specific form he needed to submit, providing a copy, and where it needed to be filed. She had also previously sent the form to Appellant and posted it on his property. Exs. D3, page 3, D9, pages 20-25, D12; testimony of Ofc. Sawin.[2]

[2] At the conclusion of our August 1 hearing, we left the record open for Ofc. Sawin to submit the June 14, 2022, materials discussed during testimony time. She did so later that morning. Ex. D12. Mr. Plowman emailed that evening. Ex. A9. Mr. Plowman objected that the documents were not timely submitted; again, the Examiner kept the record open on August 1 for documents the *Examiner* requested, not those Local Services sought to submit. Those materials' bearing, or non-bearing, on today's decision is weaved into today's decision. And we have taken under consideration Plowman's arguments about what the documents say and how that relates to today's decision.

20. As explained in Finding 11, the Superior Court returned or dismissed the appeal due to several flaws. As of April 16, 2024, it had no motions pending before it on the Roth matter. Neither Mr. Plowman nor Mr. Roth has pointed to any more recent judicial activity.

21. Mr. Plowman submitted a Declaration in support of Appellant's contention that he timely appealed the Decision on Appeal of Notice and Order to King County Superior Court. Exhibit C to the Declaration is a blank (not filled out) Order Setting Land Use Case Schedule. It does not contain a caption, cause number, or any dates. Ex. A1.

22. Exhibit F contains an April 1, 2024, email from a Superior Court bailiff indicating that he is unable to find a record of the existence of the case number. The Declaration also explains that clerks at the Superior Court Clerk's office at 516 3rd Ave. in the Regional Justice Center were similarly unable to access the referenced cause number. Nor was the filing fee withdrawn from the account Mr. Plowman contends that he used to pay the filing fee.

Violation 2

23. As explained in Finding 16, to prevail the Appellant must demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance, are otherwise erroneous, or are excessive under the circumstances. KCC 23.32.110. None of the issues Appellant raises regarding Violation 2 relate to these standards. Nevertheless, we address his contentions briefly.

24. There is abundant evidence in the record on the Notice and Order that the decks and accessory structures extend into critical area buffers and a Drainage Easement and a Native Growth Protection Easement. One of the purposes of the critical areas regulations is to establish development standards to protect functions and values critical areas. That is the purpose of the buffer. Decision on Appeal of Notice and Order, finding 36; KCC 21A.24.010.A.

25. As explained in Finding 2, the Notice and Order put Appellant on notice of fine amount he could incur should he not timely bring his property into compliance. Ex. D2, page 2. Exhibit D8 explains the basis for the penalty for Violation 1 ($25 basic + $15 environmental damage risk + $25 economic benefit to responsible party).

26. It is not credible that Appellant received no benefit from the construction of adaptive structures located upon it.

Matters raised for the first time at hearing

27. At the hearing, Appellant argued that the civil penalties are "deficient on their face" because Permitting failed to comply with KCC 23.20.030's requirements that a citation contain a brief description of the violation or violations found and a statement of the specific ordinance, resolution, regulation, or other provision that was violated. There are multiple flaws with this argument. First, Appellant did not raise this issue in his appeal statement, nor did he seek to amend his appeal statement. The scope of an appeal is

limited to matters or issues raised in the initial appeal and any amendment to the appeal the examiner may authorize. KCC 20.22.080.G. Second, Permitting did not issue a *citation* (covered by KCC ch. 23.20). Instead, it issued a notice and order (covered by KCC ch. 23.24); the contents of a notice and order are governed by KCC 23.24.030. And third, any perceived procedural flaw in the Notice and Order had to have been raised in an appeal of that Notice and Order (i.e., back in 2023), not in an appeal of Permitting's 2024 denial of a civil penalty waiver. KCC 23.32.120.A.

28. Finally, Appellant testified that he is confused about what is necessary going forward. That is the purpose of an ABC Pre-screening meeting.

29. Any Finding of Fact which should more properly be considered a Conclusion of Law is hereby adopted as a Conclusion of Law.

CONCLUSIONS:

1. Any Conclusion of Law which should more properly be considered a Finding of Fact is hereby adopted as a Finding of Fact.

2. Appellant may not challenge the Examiner's decision on an appeal of a notice and order through an appeal of the denial of a civil penalty waiver. The proper venue for such a challenge is Superior Court under the Land Use Petition Act. KCC 23.32.120.A.

3. Appellant has not demonstrated by preponderance of the evidence that civil penalties were assessed after achieving compliance, are otherwise erroneous, or are excessive under the circumstances.

DECISION:

The appeal is **DENIED.**

ORDERED August 12, 2024.

Alison Moss
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 AUGUST 1, 2024, HEARING IN THE APPEAL OF PATRICK ROTH, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR220402 (WAIVER)

Alison Moss was the Hearing Examiner *pro tem* in this matter. Participating in the hearing were Holly Sawin, LaDonna Whalen, Stephen Plowman, and Patrick Roth. 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	King County Code Enforcement Staff Report
Exhibit no. D2	Stop Work and Appeal form posted on March 8, 2023
Exhibit no. D3	Notice of Stop Work Appeal dated March 31, 2023
Exhibit no. D4	Notice & Order issued on March 16, 2023
Exhibit no. D5	Appeal of Order dated April 10, 2023
Exhibit no. D6	Hearing Examiner pro tem report and decision dated August 8, 2023
Exhibit no. D7	Fee Waiver request dated November 30, 2023
Exhibit no. D8	Civil Penalty Waiver denial letter to Patrick Roth, from LaDonna Whalen, dated February 8, 2024
Exhibit no. D9	Appeal of Fee Waiver decision dated February 26, 2024
Exhibit no. D10	Roth ENFR22-0042 waiver Order Dissolving Stay dated April 26, 2024
Exhibit no. D11	King County Code 23.32.050 – Waivers
Exhibit no. D12	Sawin submission: Letter June 14, 2022; Pre-screening meeting application; posting

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

Exhibit no. A1	Declaration of Stephen Plowman
Exhibit no. A2	Patrick Roth letter and submission
Exhibit no. A3	Email between Patrick Roth and Holly Sawin
Exhibit no. A4	Letter from Patrick Roth
Exhibit no. A5	Email from Hearing Examiner's Office
Exhibit no. A6	Email from Patrick Roth
Exhibit no. A7	Order of Stay, dated April 5, 2024
Exhibit no. A8	Order Dissolving Stay, dated April 26, 2024
Exhibit no. A9	Mr. Plowman email, dated August 1

August 12, 2024

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR220402 (Waiver)**

PATRICK ROTH
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 August 12, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Campbell, Thomas
Department of Local Services

Miller, Bernie
Maplewood Estates HOA

Plowman, Stephen
Hardcopy

Roth, Patrick
Hardcopy

Sawin, Holly
Department of Local Services

Whalen, LaDonna
Department of Local Services