March 8, 2024

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR230421**

CHLOE BROWN AND ALAINA HAYWARD
Code Enforcement Appeal

Location: [redacted]

Appellants: **Chloe Brown and Alaina Hayward**
[redacted]
Seattle, WA 98125
Telephone: [redacted]
Email: [redacted]

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
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FINDINGS AND CONCLUSIONS:

Overview

1. The Department of Local Services (Local Services) issued Chloe Brown and Alaina Hayward a violation notice and order to bring the property into compliance. They appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we find that Local Services has not proven a clearing or grading violation but has shown storage of a travel trailer without an established primary use and—despite Appellants' cleanup efforts to date—a continuing accumulation of debris. We provide compliance steps and deadlines.

Analysis

Clearing & Grading Overview

2. The code starts from the premise that, unless specifically excepted, a person may not do *any* clearing or grading without first obtaining a permit. KCC 16.82.050.B. The definition of "grading" is broad, meaning "any excavating, filling or land-disturbing activity, or combination thereof," with "land disturbing activity" itself defined as activity resulting "in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography." KCC 16.82.020.O & Q. The definition of clearing is even broader, including "the cutting, killing, grubbing or removing of vegetation or other organic material by physical, mechanical, chemical or any other similar means." KCC 16.82.020.D.

3. Thus, anyone who works any ground or vegetation in unincorporated King County, in almost any manner, has "cleared" or "graded." Each person who mows the lawn in the summer, prunes back the hedges in the fall, or tosses down some gravel to fill in a walkway's low spots in the winter, would have the burden to affirmatively demonstrate an exemption to the permit requirement.

4. To avoid that absurd result, we have consistently required Local Services to assert and then (if appealed) to prove clearing or grading either in excess of one of the first three numbered threshold exceptions in KCC 16.82.051.C—excavation over five feet deep/fill over three feet high or over 100 cubic yards, adding over 2,000 ft.^{2} of new or replaced impervious surface, or clearing over 7,000 ft.^{2}—*or* in a location, such as a critical area/buffer, where those three threshold triggers do not apply. If Local Services does, then it is an appellants' burden to show that some or all of that clearing/grading fit into one of the other 23 exceptions KCC 16.82.051.C provides.

Grading

5. The notice and order assert the creation of over 2000 ft.^{2} of impervious surface since 2005. Ex. D2 at 001. The staff report mentioned construction of driveways across the two parcels and the exhibits included photos of bark-covered vehicle areas. Ex. D1 at 001, and, for example Ex. D5 at 001. However, Local Services did not offer any exhibits or testimony mapping those areas on the property or calculating the square footage of impervious surface added since 2005.

6. Within the steep slope or its buffer, there is no threshold below which grading does not require a permit. However, Local Services did not show grading within a steep slope or its buffer. The critical area iMaps show the steep slope towards the back, western portion of the property (except for a berm by the road to the east), and grading work outside those green areas. Ex. D6 at 001, Ex. D8 at 001. It is possible that some of the grading was in the steep slope *buffer*, but there is no map with any buffer measured or lines drawn. And we will not speculate.

7. Local Services has not met its burden of proving a grading violation.

Clearing

8. We have noted serious concerns with the vague "cumulative" 7000 ft.² threshold, where—unlike the 2000 ft.² of impervious surface added to a single site since the modern clearing and grading code's adoption in 2005—there is no baseline to measure against. That is not problematic here, because Local Services is asserting clearing activity that took place long after January 1, 2005. Local Services did not show how it reached its 10,000 ft.² estimate, but it did explain at hearing that this was its sense of total clearing spread out over Appellants *two* abutting properties, and thus that it was not asserting over 7000 ft.² of clearing on either property.

9. As noted above with grading, that exemption does not apply within a steep slope buffer critical area or its buffer. Local Services pointed (in the form of a dotted line) to a cleared area at the back, western portion of the property, but that was marked as "2019 iMap pre-disturbance." Ex. D7. That area also appears to be outside the steep slope on the critical areas map. Ex. D6. So, we have no "before" picture to set a pre-2019 baseline, nor maps measuring or drawing in any steep slope buffers. And that area looks to have grown back in. Ex. D9. *See* KCC 23.02.010.M ("'Remediate' means…for sites that have been degraded under prior ownerships, restore to a condition that does not pose a probable threat to the environment or to the public health, safety or welfare.")

10. Local Services has not met its burden of proving a clearing violation.

Travel Trailer

11. Appellant explained that they are not living in the trailer but using it for storage. Residential accessory buildings where the floor area is under 200 ft.² used as tool and storage sheds are exempt from the need for a building permit. KCC 16.02.240.1. If the total dimensions of the trailer are 8' x 27' or 216 ft.², it is likely that the floor area—measured inside the trailer—is less than 200 ft.² However, accessory structures must be *accessory* to an established, primary use, such as residential. As the code phrases it, an accessory structure must be "[s]ubordinate and incidental to the principal use." KCC 21A.06.013.C. There is no established primary use of the property which could allow for accessory structures.

12. Appellants want to site a manufactured home on the property. Temporary structures may be allowed during periods of active construction, if used for storage of tools and equipment (or for supervisory offices) and if removed within thirty days of project completion or work ceasing. KCC 21A.32.150. "A container used for storage of construction materials and equipment associated with a valid building or grading permit for the property on which it is located" is allowed.[1] However, there is no active permit application. Appellants are exploring it. We note that given all the environmental and other setbacks and slopes, as well as disturbed ground (which can complicate septic drain field placement) it might be prohibitively expensive, if not potentially infeasible, to cite a

[1] *See also* https://www.kingcounty.gov/~/media/depts/permitting-environmental-review/dper/documents/forms/Cargo-Container-Building-Permits.ashx?la=en.

residence—and more specifically a septic drain field—on either property. But Appellants can continue exploring that.

13. The first step to figuring out the feasibility of the project is submitting a complete prescreening meeting request to Local Services. At that meeting, Permitting staff can give an overview and helpful information to educate Appellants' decision. We will provide Appellants 60 days to submit their request. Or they can cut their losses and simply remove everything, including the green trailer, from the property. If that is accompanied with the debris removal mentioned in the next paragraph, that would wrap up the code enforcement case and let them approach home construction on their own timeline.

Debris

14. Appellants described the work they have undertaken to clean up the property. But some junk remains. *See, especially*, Ex. D5 at 003, bottom left. An owner does not need to keep or return a property to the condition that, say, a ritzy homeowner's association would require, but one cannot have the "accumulation" of rubbish, salvage, or debris cited in the notice and order. We will provide Appellants 60 days to clean up the property and move into the green trailer items they need going forward (assuming they are proceeding now with citing a home on the parcel).

DECISION:

1. We GRANT the appeal as to clearing and grading.

2. We DENY the appeal as to the travel trailer and as to rubbish, salvage, and debris.

3. Regardless which of the two options below the Appellants choose, by **May 8, 2024**, Appellants must finish cleaning up the property and move the items they need going forward into the green trailer.

4. By **May 8, 2024**, Appellants must either remove the green trailer and all other items from the property *or* submit a complete permit prescreen application (application form, site plan, site area worksheet, photos, fee) on mybuildingpermit.com. Then, attend the pre-screen meeting. After the meeting, Appellants will receive an email on options and "next steps," which may involve submittals to Local Services or, more likely, submittals to Public Health. Thereafter meet all deadlines and requested information associated with any permits, pick up the permits within the required deadlines, and obtain final permit approval by the deadlines.

5. No penalties shall be assessed against Chloe Brown or Alaina Hayward or the subject properties if the above actions are completed by those deadlines, or by any reasonable deadline extension Local Services provides. If not, Local Services may issue penalties retroactive to today. <u>Be sure to notify Local Services of progress and ask for any necessary deadline extensions well before the above deadlines expire.</u>

ORDERED March 8, 2024.

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 FEBRUARY 23, 2024, HEARING IN THE APPEAL OF CHLOE BROWN AND ALAINA HAYWARD, DEPARTMENT OF LOCAL SERVICES FILE NO. ENFR230421

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, Chloe Brown, and Alaina Hayward. 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
Exhibit no. D2	Notice and order, issued July 29, 2023
Exhibit no. D3	Appeal, received July 23, 2023
Exhibit no. D4	Photographs of subject property taken by Officer Sawin, dated June 16, 2023
Exhibit no. D5	Photographs of subject property taken by Officer Sawin, dated February 7, 2024
Exhibit no. D6	iMAP 2019 aerial - predisturbance
Exhibit no. D7	iMAP 2021 Steep slope hazard layer with clearing and grading within steep slope and/or Steep slope buffer
Exhibit no. D8	Near Map aerial dated April 26, 2023
Exhibit no. D9	Links to the King County Codes cited in the Notice and Order

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CERTIFICATE OF SERVICE

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CHLOE BROWN AND ALAINA HAYWARD
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 March 8, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Alaina Hayward, Chloe Brown
Hardcopy

Campbell, Thomas
Department of Local Services

Sawin, Holly
Department of Local Services

Whalen, LaDonna
Department of Local Services